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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In the Matters of:

RESIDENTIAL CAPITAL, LLC, et al., Case No. 12-12020-mg
Debtors.

- - - - -x

RESIDENTIAL CAPITAL, LLC, et al.,
Plaintiffs, Adv. No. 13-01343-mg
- against -

UMB BANK, N.A., in its Capacity as Trustee
INDENTURE TRUSTEE,
Defendant.

- - - - -x

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, et al.,
Plaintiffs, Adv. No. 13-01277-mg
- against -

UMB BANK, N.A., et al.,
Defendants.

- - - - -x

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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November 20, 2013

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9:05 AM

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B E F O R E:

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HON. MARTIN GLENN

23

U.S. BANKRUPTCY JUDGE

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1

2 Adversary proceeding: 13-01277-mg Official Committee of
3 Unsecured Creditors et al v. UMB Bank, N.A., et al.

4 PHASE II TRIAL

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6 Adversary proceeding: 13-01343-mg Residential Capital, LLC et
7 al. v. UMB Bank, N.A., in its Capacity as Indenture Trustee

8 PHASE II TRIAL

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10 12-12020-mg Residential Capital, LLC

11 CONFIRMATION HEARING.

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13 Fairness Hearing RE: Kessler Settlement Class.

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 All right. We're here in Residential Capital number
4 12-12020.

5 We're going to continue with, I think, the last
6 opening statement.

7 Mr. Rode, you wanted to make an opening statement?
8 Come on up.

9 MR. RODE: Thank you, Your Honor.

10 THE COURT: If you would identify yourself on the
11 record.

12 MR. RODE: Yes, sir. My name is Richard Rode. I
13 reside in Deer Park, Texas, where I live and built my home. I
14 am an unsecured creditor in debtors' bankruptcy case, and I
15 would like to thank Your Honor for this opportunity to present
16 my opening statement.

17 I'm not an attorney, although I am surrounded by some,
18 and I have never --

19 THE COURT: There are probably some non-attorneys in
20 here as well, so you're not entirely alone.

21 MR. RODE: I don't know.

22 THE COURT: But don't let that stop you anyway. Okay?

23 MR. RODE: Okay. And I'm not very adverse (sic) in
24 bankruptcy law. This public appearance in front of the
25 attendees in this courtroom is very overwhelming for me, and so

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16

1 I apologize up front for my informal presentation.

2 I am a homeowner and borrower. Along with everyone
3 else involved in this case I do feel that my case is just as
4 important and deserve full compensation as explained yesterday
5 by everybody else. I did agree with that.

6 I also concede that not everybody is going to be happy
7 or a hundred percent satisfied, although it sure would be nice.

8 I personally appreciate and recognize the burden of
9 this Court to sort through all the litigation, provide a fair
10 and amicable solution to these complex situations.

11 My position is not to disrupt or create delays in
12 these proceedings, but to represent myself in person at my own
13 expense, to get answers to a small part -- I'm sorry, to my
14 personal experiences related to the -- related to the Court, my
15 reasons for objecting to the plan. I understand, I am a small
16 part of the proceedings, but the importance of losing my
17 investment in property in proportion is just as great as those
18 that are senior, junior and affiliates of ResCap.

19 My pre-petition suit seems to be valued now at less
20 than one percent, and with senior noteholders being
21 conservatively compensated and I'm assuming that it could be
22 anywhere from ninety to whatever -- and I'm just
23 guesstimating -- I did hear a lot about junior holders
24 yesterday and it seems like they have a good case. They may be
25 around zero to 120 percent, I don't know. And I understand

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1 that AFI will be contributing 2.1 billion dollars, which is
2 wonderful, but it doesn't compensate or help me as a homeowner
3 in regards to the same amount of money that I have at stake, in
4 proportion.

5 My case was stayed and yet allowed debtors and
6 affiliates to continue business as usual and provide them
7 breathing space as by bankruptcy law.

8 Debtors are aware and were allowed to resolve their
9 borrower claims, including being overseen by the DOJ and CFPB
10 and other agencies. My experience is that they chose not to do
11 anything in my case, and yet are now being rewarded unjustly by
12 continuing their same practices. And to allow AFI to be
13 released from, in my case, the post-petition is not reasonable
14 based on the amount of the borrowers' accounts, service and
15 property retained by AFI, all the time not disclosing the
16 securities and loan accounting as required by state and federal
17 law. That's my personal opinion and I'd like to thank the
18 Court for this time.

19 THE COURT: Can I ask you just a few questions?

20 MR. RODE: Yes, sir.

21 THE COURT: Where was your lawsuit pending?

22 MR. RODE: It was in federal court in Houston, Texas.

23 THE COURT: And without getting into the legal
24 technicalities of it, what was the -- what gave rise to your
25 lawsuit?

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1 MR. RODE: Um --

2 THE COURT: Did you have a mortgage from GMAC?

3 MR. RODE: I had a mortgage from Homecomings --

4 THE COURT: Okay.

5 MR. RODE: -- and then GMAC.

6 THE COURT: And do you still have your home or was it
7 foreclosed?

8 MR. RODE: I am in my home now.

9 THE COURT: Okay. And what is the status of your
10 loan?

11 MR. RODE: That's one of the answers I'd like to have
12 answered.

13 THE COURT: Okay.

14 MR. RODE: And I'm being serious.

15 THE COURT: And did you file a proof of claim in this
16 case?

17 MR. RODE: Yes, I did.

18 THE COURT: Okay. I've had a lot of borrowers who
19 have either moved to lift the stay to permit their state or
20 federal court actions to go forward. Quite honestly, I don't
21 remember, having had you or your case before me before.

22 MR. RODE: Very understandable.

23 THE COURT: Did you file anything beyond the claim in
24 the case.

25 MR. RODE: I was pretty devastated, no.

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1 THE COURT: Okay.

2 MR. RODE: I got my denial.

3 THE COURT: When you say you got your denial, I
4 just --

5 MR. RODE: I was telephonically connected.

6 THE COURT: Okay.

7 MR. RODE: And my case never did get heard and I was
8 then told when I called back into the Court that I had missed
9 my time --

10 THE COURT: Okay.

11 MR. RODE: -- even though I was on the line for two and
12 a half hours, and that it was -- the next day I was -- Ms.
13 Richards let me know that it was denied. And then I received
14 the paperwork a week later from the Court documents that it had
15 been denied.

16 THE COURT: All right. I'm going to have to check. I
17 want to make sure and find out happened. I mean, when I have a
18 hearing -- and I do permit borrowers to appear by telephone --

19 MR. RODE: Yes.

20 THE COURT: -- you've obviously come a long way from
21 Texas to be here for this hearing, I do typically allow
22 borrowers to appear by telephone. I call the calendar and if
23 people aren't on the phone, there is nothing I can do about
24 that.

25 MR. RODE: I understand.

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1 THE COURT: But Mr. Lee, if -- before the end of the
2 day, if you could advise me what the issue was with Mr. Rode
3 that came before the Court and what the Court's position was.

4 MR. LEE: I could do it now, Your Honor.

5 THE COURT: Okay, if you would. Stay right there, Mr.
6 Rode. Okay?

7 MR. LEE: Yes. Good morning, Your Honor. Gary Lee,
8 from Morrison & Foerster. My understanding was that there was
9 a motion for relief from the stay. I'm not sure whether the
10 debtors were or weren't -- what the opposition was at the time.

11 My understanding was that when the Court called the
12 case, there was no appearance on behalf of Mr. Rode, who was
13 represented by counsel, I think, with respect to at least some
14 part of this matter, and as a result the Court disposed of the
15 matter because there was --

16 THE COURT: And it was a lift stay motion?

17 MR. LEE: That's correct, Your Honor.

18 THE COURT: But Mr. Rode has filed a proof of claim
19 and that remains. That's hasn't been -- has there been a claim
20 objection with respect to Mr. Rode's claim?

21 MR. LEE: No, Your Honor Mr. Rode filed a proof of
22 claim for five million dollars.. There has been no objection
23 to that claim.

24 THE COURT: Okay. All right. So that remains at some
25 point to be dealt with one way or the other.

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1 MR. LEE: Absolutely. And hopefully either, I'm not
2 sure if it's a general unsecured claim or a borrower claim. If
3 it's a borrower claim, obviously hopefully, through the
4 borrower trust.

5 THE COURT: Okay.

6 MR. LEE: I'm not sure whether anybody has explained
7 this to Mr. Rode, but the general unsecured recoveries are the
8 same for borrowers, it's about thirty-four percent. I'm more
9 than happy to take him through the --

10 THE COURT: Perhaps somebody can -- are you going to
11 be staying for the hearing today, Mr. Rode?

12 MR. RODE: Yes, I am.

13 THE COURT: Okay, maybe during one of the recesses one
14 of the debtors' counsel or one of the creditors counsel can
15 talk to you -- because you're not represented by a lawyer?

16 MR. RODE: Correct.

17 THE COURT: Okay. Then they can talk to you directly.
18 If you were represented by a lawyer, they couldn't talk to you
19 without --

20 MR. RODE: I understand.

21 THE COURT: Okay. So during one of the recesses,
22 hopefully somebody can talk to you.

23 MR. RODE: Thank you very much.

24 THE COURT: Thank you very much Mr. Rode.

25 Okay. Are we ready for the first witness?

RESIDENTIAL CAPITAL, LLC, ET AL.

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1 MR. KERR: Your Honor, Charles Kerr, Morrison &
2 Foerster on behalf of the debtors. Two things I'd like to
3 raise before we put on our first witness, Your Honor.

4 As I mentioned yesterday, we're trying to make this
5 process go as smoothly as possible. We may take some witness
6 who I don't think are going to be cross-examined, take them out
7 of order, and I will try to work with counsel to make that
8 work, just so they can get in here and get out.

9 THE COURT: Okay.

10 MR. KERR: The second thing, Your Honor, is on Monday
11 Your Honor entered an order granting the plan proponents'
12 motion to exclude the proposed expert testimony of Raymond
13 Lyons. The number is docket number 5800.

14 The exclusion of Mr. Lyons' testimony necessarily
15 affects the testimony of Michael Fazio, who is another expert
16 that the JSNs are putting on. Portions of Mr. Fazio's
17 testimony is based on and incorporates Judge Lyons' testimony.

18 We were going to wait to raise this issue until Mr. --

19 THE COURT: Wait to raise it. Both sides agreed
20 there'd only be one motion in limine, and that's --

21 MR. KERR: I understand that, Your Honor, but
22 yesterday during their opening they put up a demonstrative --

23 THE COURT: Yes, and I raised an issue about it too.

24 So openings are not evidence and when I come to
25 consider evidence and closing arg -- when I come to consider

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23

1 disposition and closing argument, only those things that are in
2 evidence will be considered by the Court.

3 I mean, I raised with Mr. Cohen yesterday, it seemed
4 pretty clear to me that some of the demonstratives that he
5 showed included information that was derived from Mr. Lyons'
6 report, which his testimony or report have been excluded from
7 evidence, so.

8 MR. KERR: And that's fine, Your Honor. And we didn't
9 raise it yesterday because of that. but all I want to alert
10 Your Honor to is that there are certain portions of Mr. Fazio's
11 testimony we think should be in or out, and I can provide --

12 THE COURT: See if you can work it out with Mr.
13 Cohen --

14 MR. KERR: Fine.

15 THE COURT: -- and we may obviate the need for -- you
16 know, obviously I ruled on the admissibility of Mr. Lyons'
17 expert testimony and report. Another witness cant -- well, I'm
18 going to leave it in the first instance to see whether --

19 MR. KERR: Right.

20 THE COURT: -- you can resolve -- if there remains any
21 issues, I'll deal with it at the time. See if you and Mr.
22 Cohen can work out the issue, okay.

23 MR. KERR: We'll try to do that, Your Honor.

24 THE COURT: Thank you very much, Mr. Kerr.

25 MR. KERR: Okay. Our first witness will be Joe

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24

1 Morrow.

2 THE COURT: Okay.

3 MR. KERR: Your Honor, again, we have -- well, we have
4 binders for Mr. Morrow and we can bring them up. I'm not sure
5 Mr. Morrow is going to be cross-examined. But --

6 THE COURT: Well, let me ask, is anybody intending to
7 cross-examine Mr. Morrow?

8 MR. COHEN: Your Honor, David Cohen on behalf the
9 JSNs.

10 We've reached a stipulation with the plan proponents,
11 with respect to his testimony that I'd like to read into the
12 record; and that would obviate the need for cross.

13 MR. KERR: Mr. Morris was going to do that anyways,
14 but either way. But --

15 MR. COHEN: You can read it.

16 THE COURT: Well, I think, let's get his direct --
17 offer his direct.

18 MR. LAWRENCE: Okay, yes, Your Honor.

19 THE COURT: Why don't you hang tight. We'll see
20 whether you -- why don't you be sworn in any event? Okay.
21 Just raise your right hand and you'll be sworn.

22 (Witness sworn)

23 THE COURT: All right. Please have a seat. We'll see
24 how long you're up there. Okay?

25 MR. LAWRENCE: Good morning, Your Honor. Alex

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1 Lawrence on behalf of the debtors.

2 In support of the joint Chapter 11 plan proposed by
3 the debtors and the official committee of unsecured creditors,
4 the debtors offer the affidavit of Joseph Morrow, dated
5 November 12, 2013 which was filed as docket entry number 5699
6 and which is also marked as Plan Proponents' Exhibit 929.

7 If Mr. Morrow were called to testify, he would testify
8 as to what is in his written affidavit. We therefore offer his
9 affidavit as direct testimony in factual support of plan
10 confirmation.

11 THE COURT: All right. Are there any objections to
12 the admission into evidence of Mr. Morrow's affidavit, which is
13 Exhibit 929?

14 All right, hearing no objection, it is in evidence.
15 (Affidavit of Joseph Morrow in lieu of direct testimony was
16 hereby received into evidence as Plan Proponents' Exhibit 929,
17 as of this date.)

18 THE COURT: Mr. Cohen, did you want to read your --
19 you have a -- it's a stipulation? Is that --

20 MR. COHEN: It is, Your Honor.

21 MR. LAWRENCE: David, come on up and you can have the
22 honor.

23 MR. COHEN: The stipulation that we have agreed to
24 with the plan proponents is that for the avoidance of doubt
25 nothing in the affidavit of P. Joseph Morrow, IV, certifying

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1 the tabulation of votes on the joint Chapter 11 plan proposed
2 by Residential Capital LLC, et al. and the official committee
3 of unsecured creditors at docket number 5699 establishes that a
4 particular claim for which a ballot was cast is an allowed
5 claim entitled to distribution under the plan.

6 THE COURT: Is that agreed?

7 MR. LAWRENCE: Yes, that is agreed, Your Honor.

8 THE COURT: All right.

9 MR. COHEN: Thank you.

10 THE COURT: That's fine. May I just ask this --

11 MR. KERR: Your Honor --

12 THE COURT: Where there isn't going to be cross-
13 examination, I don't want all of the exhibits that somebody --
14 I do want a copy of the witness statement, because I've got so
15 many -- it's hard for me to find materials. So I want to at
16 least on those where there is no objection, just the witness
17 statement.

18 MR. KERR: May approach?

19 THE COURT: Thank you. Mr. Kerr, thank you very much.
20 All right, I've been handed a notebook that has a copy of the
21 affidavit of P. Joseph Morrow, IV. It's ECF docket 5699 in the
22 main case. All right.

23 MR. LAWRENCE: Your Honor, also in connection with Mr.
24 Morrow's --

25 THE COURT: Yes.

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1 MR. LAWRENCE: -- direct testimony, we'd like to offer
2 a number of exhibits --

3 THE COURT: Okay.

4 MR. LAWRENCE: -- which are referenced in his direct
5 testimony.

6 THE COURT: All right.

7 MR. LAWRENCE: They're all either orders of the Court
8 or court filings related to --

9 THE COURT: Offer them; we'll see whether there's any
10 objections, okay.

11 MR. LAWRENCE: Yes, Your Honor. We offer Plan
12 Proponents' Exhibit numbers 865, 868, 905, 908, 909, 910, 911,
13 912, 913, 914, 915, 916, 917, 918, 919, 920 --

14 THE COURT: Hold on. Slow down. I keep notes of --

15 MR. LAWRENCE: I apologize, Your Honor --

16 THE COURT: -- just to keep track of what's -- all
17 right, 919. What's after 919?

18 MR. LAWRENCE: 920, 921, 922, 923, 932 and 933.

19 THE COURT: All right. Are there any objections to
20 any of those exhibits that have just been identified?

21 All right. Each of those exhibits 965, 968, 905 --
22 excuse me, strike that. Okay, 865, 868, 905, 908, 909, 910,
23 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922,
24 923, 932 and 933 are all admitted in evidence.

25 (Exhibits regarding Mr. Morrow's testimony were hereby received

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1 into evidence as Plan Proponents' Exhibits 865, 868, 905, 908,
2 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920,
3 921, 922, 923, 932 and 933, as of this date.)

4 MR. LAWRENCE: With that, Your Honor hopefully Mr.
5 Morrow can be excused.

6 THE COURT: All right, Mr. Morrow you can be excused.

7 THE WITNESS: Thank you.

8 MR. LAWRENCE: Thank you, Your Honor.

9 THE COURT: Thank you very much.

10 Thank you for your brief appearance, Mr. Morrow.

11 THE WITNESS: You're welcome.

12 THE COURT: It should all go that quickly.

13 Mr. Rains?

14 MR. RAINS: Good morning, Your Honor. We'll hope this
15 next one will go just as quickly.

16 THE COURT: You have to identify yourself.

17 MR. RAINS: Yeah, Darryl Rains of Morrison & Foerster
18 on behalf of the debtors.

19 Our next witness in support of plan confirmation is
20 Jeffrey Lipps.

21 THE COURT: Mr. Lipps, come on up. I think you had a
22 brief appearance at the last trial.

23 MR. LIPPS: Very brief.

24 THE COURT: Very brief. Come on up. You'll be sworn.

25 (Witness sworn)

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1 THE COURT: Please have a seat.

2 All right, Mr. Rains.

3 MR. RAINS: Thank you, Your Honor.

4 The direct testimony of Mr. Lipps was filed on
5 November 12 as docket entry 5701 and the debtors now move Mr.
6 Lipps' direct testimony into evidence.

7 THE COURT: All right.

8 Any objections to Mr. Lipps' direct testimony which is
9 ECF docket number 5701?

10 Hearing no objection, the direct testimony of Mr.
11 Lipps, Jeffrey A. Lipps, ECF docket 5701 is in evidence.

12 (Direct testimony of Jeffrey Lipps was hereby received into
13 evidence as Plan Proponents' Exhibit, as of this date.)

14 MR. RAINS: Your Honor, there are a large number of
15 exhibits associated with Mr. Lipps' testimony. With your
16 permission I'd like to offer them into evidence in groups.

17 THE COURT: Okay.

18 MR. RAINS: The first group consists of proof of
19 claims.

20 THE COURT: How large is the group?

21 MR. RAINS: About 500 exhibits, Your Honor.

22 THE COURT: Oh. Do you have a piece of paper with all
23 the numbers on it? Here's what I would like. Rather than -- I
24 don't want to have to go through and read 500 exhibit numbers,
25 but to spare me that task, you have to give me and give other

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1 counsel a list of all of the exhibits by number that you're
2 offering. Have you shown them the list before?

3 MR. RAINS: We have; and I should say that they're all
4 being offered for a limited purpose, and with that caveat,
5 there are no objections.

6 THE COURT: Is that correct? Any other counsel
7 involved?

8 MR. RAINS: They're not offered for the proof.

9 THE COURT: Right. Mr. Cohen?

10 MR. COHEN: We have no objection to having them
11 entered for a limited purpose.

12 THE COURT: So I can hold off on that, but again, I do
13 need -- so what you ought to do, file it as a separate ECF
14 docket number. It should, it doesn't need -- you know, it's
15 the list of exhibits offered and admitted in evidence without
16 objection through the testimony of Jeffrey A. Lipps, and just
17 have the exhibit number for each of those exhibits. Make sure
18 that counsel have an opportunity to review the list and confirm
19 that that's accurate, and it will spare us all the exercise of
20 going through and me -- because I really do try -- and let me
21 say this now, okay.

22 So when we close all the evidence, what I'm going to
23 ask is, is that you all confer and with my law clerks to make
24 sure that I have a complete, accurate and agreed list of all
25 exhibits that have been introduced into evidence. Any that

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1 have been marked for identification but not -- and identified
2 in court, but not introduced, and any that have been admitted
3 in evidence.

4 So we won't take more time now with it, but what we've
5 done at it each of the other ResCap trials, make sure I get
6 that list, and if there are any disagreements we'll sort it
7 out.

8 Is that okay, Mr. Cohen?

9 MR. COHEN: Yeah. That would be fine, Your Honor.

10 THE COURT: Okay. Because it works both ways. So --

11 MR. RAINS: We'll do that; we'll make that filing,
12 Your Honor.

13 I will say for the proof of claims, fortunately
14 they're all in sequence, so it's 951 through 1429.

15 THE COURT: Yeah. I just -- I want to make sure that
16 there is a list that has them all so that later on there's no
17 issue about what exhibits were admitted into evidence during
18 the trial.

19 MR. RAINS: We'll do a filing later today of his
20 exhibits and of course we'll check the list later.

21 THE COURT: Thank you.

22 MR. COHEN: And that procedure makes great sense to
23 us.

24 THE COURT: Okay. Thank you. I appreciate it.

25 MR. RAINS: Your Honor, we do have other groups

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1 through them. They're not as numerous. Would you like me to
2 offer them now or follow the same procedure?

3 THE COURT: Have you worked out with Mr. Cohen, are
4 the other exhibits agreed or not?

5 MR. RAINS: I think they are. Let me say that the
6 next group are pleadings in underlying securities and monoline
7 actions. They also are offered for a limited purpose, not
8 offered for the truth of the matter asserted, and I believe
9 with that caveat you guys are okay with it.

10 MR. COHEN: We'd like to see the list, but I think we
11 will be okay, so let's follow the same procedure.

12 THE COURT: Okay. Let's follow the same procedure.

13 MR. RAINS: Okay.

14 THE COURT: If there are -- so I'm reserving. If
15 there are issues you raise, Mr. Cohen, about any of the ones
16 we'll deal with it accordingly.

17 How many in this group?

18 MR. RAINS: Oh, about maybe twenty or twenty-five.

19 THE COURT: Okay. That's fine.

20 MR. COHEN: That will be fine, Your Honor. Thank you.

21 THE COURT: Now there are other parties-in-interest
22 who are here, and this is the combined phase 2 trial in the
23 adversary proceeding, but also the confirmation hearing.

24 So if there are other parties-in-interest who aren't
25 in agreement with what's being said, you need to stand and

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1 indicate it. I'm going to take the silence of any other
2 counsel or pro se parties-in-interest as agreement with what
3 Mr. Cohen and his colleagues are saying, okay, just to make
4 that clear.

5 So I don't want to hear about it later. They're being
6 offered now. We'll go through the same procedure of having a
7 typed list, the document will be filed on ECF, counsel will
8 have an opportunity to review it. But if there are objections
9 I need to hear about it now, okay.

10 MR. RAINS: Great. Thank you, Your Honor.

11 THE COURT: All right.

12 MR. RAINS: I have about ten more exhibits.

13 THE COURT: Okay.

14 MR. RAINS: There are eight sample agreements from the
15 debtors' securitizations, these are RMBS securitization
16 agreements, Exhibits 640 through 647 and 737. We offer those
17 in evidence.

18 THE COURT: Mr. Cohen?

19 MR. COHEN: We'll look at all of these exhibits once
20 the list gets filed.

21 THE COURT: Okay.

22 MR. RAINS: So then the last --

23 THE COURT: Mr. Rain, you can put them all on a single
24 list.

25 MR. RAINS: Will do, Your Honor.

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1 THE COURT: Okay. But if you want to -- so I'm not
2 ruling now. 640 to 647 and 737 were the additional ones you
3 just identified now?

4 MR. RAINS: Right, and then the last two are prior
5 pleadings in this action, those are exhibits 639 and 675, but
6 we'll put them on the list and file it today on ECF.

7 THE COURT: Okay. See if you can work that out.

8 MR. COHEN: That's right, and we'll get back to you on
9 the entire list.

10 THE COURT: That's fine. That's the most efficient
11 procedure.

12 MR. RAINS: Your Honor, with that --

13 THE COURT: Do you have any cross-examination, Mr.
14 Cohen?

15 MR. COHEN: We do not.

16 THE COURT: Okay. Anybody else wish to cross-examine
17 Mr. Lipps?

18 Mr. Lipps, you're excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: You're two for two on short appearances.

21 MR. KERR: Your Honor, may I?

22 THE COURT: Yes, please.

23 MR. KERR: Okay. Your Honor, Charles Kerr from
24 Morrison & Foerster. For our next witness, it will be Mr.
25 Thomas Marano.

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1 Your Honor in support of the Chapter 11 plan proposed
2 by the debtors and the official committee of unsecured
3 creditors, the debtors offer the direct testimony of Thomas
4 Marano dated November 12, 2013, which is filed as docket entry
5 number 5705.

6 If Mr. Marano was called to testify he would testify
7 as to what's in his written testimony. We therefore offer his
8 written direct in factual support of the consolidated
9 proceedings and plan confirmation.

10 THE COURT: All right.

11 If you would just raise your right hand and be sworn,
12 Mr. Marano.

13 (Witness sworn)

14 THE COURT: Please have a seat.

15 MR. KERR: Your Honor, we expect that there will be
16 some cross-examination --

17 THE COURT: Okay.

18 MR. KERR: -- so we think it makes sense to hand up
19 the binders, if that's okay.

20 THE COURT: Please, yes. You mean boxes?

21 (Pause)

22 MR. KERR: And Your Honor, just so -- Your Honor, I
23 can see, is scrutinizing what is all this stuff. Let me just
24 be very clear. What we've put in the binders --

25 THE COURT: I can speed-read, but not that quickly.

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1 MR. KERR: I realize that, Your Honor.

2 What we put in the binders are all the exhibits that
3 are referenced in his direct testimony. That actually includes
4 exhibits that were introduced in phase 1, are actually already
5 in evidence, but they're in the binders so if the witness needs
6 to refer to them or Your Honor wants to refer to it, they're in
7 there.

8 THE COURT: So let me just -- you picked up the
9 numbering of your exhibits for this trial with what number?

10 MR. KERR: What we did, Your Honor, is we started -- I
11 believe the phase 1 exhibits were 1 through 500, so we started
12 from 500 on.

13 THE COURT: Okay. That's what I --

14 MR. KERR: Yes.

15 THE COURT: -- I had quickly looked through the boxes.

16 MR. KERR: And if we have not done this, this is my
17 failure, Your Honor. I know we were going to bring in and give
18 to your clerks and to Your Honor an exhibit list with
19 everything on it with the numbers, and I don't know if we've
20 done that yet. If we did not, I apologize. It was filed on
21 ECF, as the second amended pre-trial order.

22 THE COURT: And actually I printed it and have it.

23 MR. KERR: Okay. So you'll see in there, Your Honor,
24 that in the -- at least plan proponents' exhibit list, it lists
25 all of the exhibits starting from 1 through I think about, the

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1 range of 1 through 500 was phase 1. And to the extent they're
2 on the list they're the ones we're referring to and they're all
3 in evidence.

4 THE COURT: So what I got was the second amendment to
5 the joint pre-trial order --

6 MR. KERR: Correct, Your Honor.

7 THE COURT: -- which I said yesterday was being
8 entered. It had attached to it as Exhibit A all of the
9 plaintiffs' or the plan proponents' --

10 MR. KERR: Plan proponents.

11 THE COURT: - plan proponents' exhibits.

12 MR. KERR: Right.

13 THE COURT: And as attached as Exhibit B were --

14 MR. KERR: I think Exhibit B, Your Honor, is the JSNs'
15 exhibit list. And Exhibit C, I believe, is Wells Fargo's
16 separate exhibit list. I don't have the document in front of
17 me, but I believe that to be the case, Your Honor.

18 THE COURT: I do. And -- let me just see something.
19 Okay.

20 MR. KERR: So, Your Honor, again we -- one second.

21 So, Your Honor, just so we're clear, we've provided
22 Your Honor with a set of the exhibits that are referenced in
23 Mr. Marano's testimony, we've given one to counsel, there is a
24 set in front of Mr. Marano, okay?

25 THE COURT: Okay.

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1 MR. KERR: With that, Your Honor, we therefore
2 offer -- one final thing, I apologize, Your Honor. I believe
3 in the first volume there is actually a copy of his written
4 direct as well.

5 THE COURT: I see that right in the beginning of the
6 binder.

7 MR. KERR: So that'll be at the beginning of this --

8 THE COURT: Yes, I have that.

9 MR. KERR: So with that, Your Honor, we offer his
10 written direct in factual support of the consolidated
11 proceedings and plan confirmation.

12 THE COURT: Any objections?

13 MR. PERRY: No objections, Your Honor.

14 THE COURT: You have to identify yourself for the
15 record.

16 MR. PERRY: Dan Perry from Milbank Tweed on behalf of
17 the JSNs.

18 THE COURT: Thank you, Mr. Perry.

19 MR. KERR: Now, Your Honor, even though we've given
20 you a large group of documents in front of you --

21 THE COURT: Let me rule. The direct testimony of
22 Thomas Marano, which was ECF number 5705 is in evidence.
23 (Direct testimony of Thomas Marano was hereby received into
24 evidence as Plan Proponents' Exhibit, as of this date.)
25

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1 THE COURT: Go ahead, Mr. Kerr.

2 MR. KERR: And, Your Honor, even though we put a large
3 number of binders, there is only a small number of items we'll
4 actually be moving into evidence with this, so let me list
5 those if I can.

6 THE COURT: Okay, if you would.

7 MR. KERR: Those would be documents -- Plan Proponent
8 Exhibits 603, 669, 810, 820, 822, 832, 835, 848, 849, 855, 856,
9 857 and 868. And of those, Your Honor, four of them are not
10 being offered for the truth.

11 THE COURT: Which ones?

12 MR. KERR: 810, 820, 822 and 832 are not being offered
13 for the truth.

14 THE COURT: All right. Are there any objections to
15 the exhibits which Mr. Kerr has just offered into evidence?

16 Hearing no objection, Exhibits 603, 669, 835, 848,
17 849, 855, 856, 857, 868 are admit in evidence for all purposes.
18 810, 820, 822 and 832 are admitted for limited purposes.
19 (Exhibits regarding Mr. Marano's testimony were hereby received
20 into evidence as Plan Proponents' Exhibits 603, 669, 810, 820,
21 822, 832, 835, 848, 849, 855, 856, 857 and 868, as of this
22 date.)

23 MR. KERR: Thank you, Your Honor. With that Mr.
24 Marano is available to be cross-examined.

25 THE COURT: All right. And I've just been handed by

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1 one of my law clerks the cross-examination binder for Mr.
2 Marano.

3 Mr. Marano, do you have water, as well?

4 THE WITNESS: No, I don't. I'm all right, right now.,
5 though

6 THE COURT: Well, let somebody bring it up to you,
7 just in case.

8 THE WITNESS: Thank you.

9 THE COURT: If my courtroom deputy is listening, you
10 can bring in the pitcher of water as well. There are some
11 bottles, but we can bring the pitcher in for the witness stand.

12 Okay.

13 MR. PERRY: For the record Dan Perry from Milbank
14 Tweed on behalf of the junior secured noteholders.

15 CROSS-EXAMINATION

16 BY MR. PERRY:

17 Q. Good morning, Mr. Marano.

18 You became chairman and CEO of ResCap in the summer of
19 2008, correct?

20 A. I was non-executive chairman, I believe, in April of 2008,
21 and then I became chairman and CEO in August.

22 Q. And you resigned as CEO in May of 2013, correct?

23 A. Correct.

24 Q. But you retain the title of chairman to this day, correct?

25 A. Correct.

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1 Q. And you were also -- you were also the chief capital
2 markets officer and the chief mortgage officer of AFI between
3 May of 2005 and May of 2012, correct?

4 A. I believe you said 2005?

5 Q. Yes.

6 A. No.

7 Q. May of -- is it May of 2009?

8 A. 2009, yes.

9 Q. So just to be clear, you were the chief capital markets
10 officer and the chief mortgage officer of AFI between May 2009
11 and May 2012, correct?

12 A. Correct.

13 Q. Now, you understand that Ally is proposing to make a 2.1-
14 billion-dollar contribution to broadly resolve all of the
15 claims against it involving ResCap, right?

16 A. Yes.

17 Q. And you never really thought about how the Ally
18 contribution would be allocated among creditors of ResCap,
19 correct?

20 A. Correct.

21 Q. And Ally's view, at least your perspective of Ally's view,
22 is that the only way you could get a settlement is if you got
23 all the creditors on board, correct?

24 MR. KERR: Objection.

25 THE COURT: Overruled.

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1 A. I don't really know what Ally's view was. I know that
2 from my perspective it was important to get as many creditors
3 on board as possible.

4 Q. Why don't you take a look at DX-BBZ in your binder?

5 A. Sorry, DX-B?

6 Q. B, as in boy, B as in boy, Z as in Zorro.

7 A. Got it.

8 Q. This is, for the record, a confidentiality letter on the
9 letterhead of Residential Capital, LLC and Ally Financial,
10 Inc.. It's addressed to Ms. Sarah Tirschwell of the Davidson
11 Kempner Capital Management, LLC fund.

12 Can you identify this document, sir?

13 A. I'm not familiar with this particular item, but it looks
14 like a form of confidentiality agreement that might restrict
15 trading associated with one of the ResCap positions.

16 Q. And this is a document that we reviewed in your
17 deposition, right?

18 A. Again, I don't recall if you handed this to me in the
19 deposition. I just don't, I'm not familiar. You handed me a
20 lot of stuff.

21 Q. Okay. Why don't you look at page 6 of the letter?

22 A. Yes.

23 Q. The letter, there is a -- and I'm looking at the
24 Residential Capital LLC signature line. Can you identify the
25 signature on the signature page that's executed purportedly on

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1 behalf of Residential Capital?

2 A. Yes, that's Tammy Hamzehpour.

3 Q. And Ms. Hamzehpour was the general counsel of Residential
4 Capital, LLC, at the time?

5 A. That's correct.

6 Q. And she was authorized to execute things like
7 confidentiality agreements on behalf of Residential Capital,
8 LLC, correct?

9 A. Yes, she would have been, yes.

10 Q. Now, certain of the junior secured noteholders
11 participated in a negotiation that led to a pre-petition
12 agreement by Ally to pay 750 million dollars to resolve certain
13 claims involving the debtors, correct?

14 A. That's correct.

15 Q. And there was a confidentiality agreement put in place to
16 facilitate their participation in the pre-petition negotiation,
17 correct?

18 A. That's correct.

19 Q. And if you turn to page 4 of the agreement -- I'm focusing
20 on the first full paragraph.

21 A. Yes.

22 Q. You understand here that the agreement is telling the
23 investor that they will be provided with material nonpublic
24 information, right?

25 A. Yes.

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1 Q. And your understanding is that this letter is advising the
2 investor that they should not be trading on the information or
3 sharing it with others, correct?

4 A. Correct.

5 Q. And then if you go down to the next paragraph, this is
6 what you would call a sunlight provision, correct?

7 A. That's correct.

8 Q. And you understood that the agreement provided that no
9 later than May 18, 2012, Ally or ResCap would either disclose
10 the material nonpublic information provided to the investor, or
11 failing that, authorize the investor to disclose the
12 information itself, correct?

13 A. Yes.

14 Q. And you understood that this sunlight provision would
15 enable the investor to then trade after May 18, 2012, correct?

16 A. Correct.

17 Q. You're a former Cerberus employee, right?

18 A. Correct.

19 Q. And you understand that it's important for funds that
20 manage money in a fiduciary capacity to be able to trade in and
21 out of their positions on occasion, correct?

22 A. Correct.

23 Q. And Exhibit BBZ at least allowed the funds that signed the
24 agreement to have the ability to trade after May 18th, 2012,
25 notwithstanding their participation in the settlement

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1 negotiations, correct?

2 A. As long as the material was disclosed, they could trade.

3 Q. Now there was a second mediation, right?

4 A. Yes.

5 Q. And that mediation began in December of 2012, right?

6 A. I believe you're referring to the efforts for mediation
7 after filing?

8 Q. This is -- well, let me ask you this. There came a point
9 in time when Judge Peck was appointed as a mediator to assist
10 the parties in this proceeding in mediating their disputes,
11 correct?

12 A. That's correct.

13 Q. And that happened in or around December 2012, correct?

14 A. That's correct.

15 Q. And you would agree with me that the JSNs were present at
16 the mediation sessions that you attended, correct?

17 A. I believe their counsel was present.

18 Q. And by your recollection, the JSNs' counsel participated
19 in the mediation that resulted in a global settlement, correct?

20 A. The only part I recall was -- of their involvement was
21 down -- there was a lower level building where Judge Peck
22 started the process. I couldn't tell you if all of the JSNs
23 were present upstairs; but I do recall they were downstairs in
24 the basement of the building.

25 Q. Okay. And you don't recall one way or another whether the

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1 debtors offered to enter into an agreement similar to what's
2 been marked as DX-BBZ to the JSNs in connection with the second
3 mediation, right?

4 A. My recollection is that throughout the bankruptcy process
5 and the mediation process, there were individuals who -- pardon
6 me, firms, that looked to get material nonpublic information,
7 and if that was part of the mediation, they were required to
8 sign this type of agreement.

9 Q. And when you say this type of agreement, you mean DX-BBZ?

10 A. Yes, so documents similar to this, which would restrict
11 their trading and provide a sunlight provision.

12 Q. So is it your testimony that the debtors offered JSNs the
13 ability to sign a confidentiality agreement substantially in
14 the form of DX-BBZ in connection with the second mediation
15 before Judge Peck?

16 A. I know from conversation with counsel that -- and I know
17 from letters that came into ResCap, that there were parties
18 that wanted to obtain material nonpublic information and I
19 directed those conversations or letters -- pardon me, I
20 directed those letters to counsel, and counsel dealt with them.

21 Q. But you don't know personally, and I'm just focused on
22 your personal knowledge, whether the debtors offered parties
23 that wanted to participate in the mediation a confidentiality
24 agreement substantially in the form of DX-BBZ, correct?

25 A. I don't know if the document, this type of document was

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1 specifically offered to a specific individual, but if they
2 chose to sign our form of document, they had the opportunity to
3 do so.

4 Q. And you don't know whether your form of document was
5 substantially in the form of DX-BBZ or had different sorts of
6 provisions, correct?

7 A. I'm not sure. I don't know.

8 Q. Okay. And you don't know what conditions Ally placed on
9 confidentiality arrangements in connection with the second
10 mediation, correct?

11 MR. KERR: Objection.

12 A. I have no idea what Ally --

13 THE COURT: Overruled.

14 A. I have no idea what Ally was doing at that point in time.

15 Q. Okay. Why don't we --

16 THE COURT: Mr. Marano, if there are objections, just
17 wait until I rule before you go ahead and answer, okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: Go ahead, Mr. Perry.

20 Q. Why don't we go to DX-BCG. This is an e-mail exchange
21 between Mr. Groper and Kenneth Eckstein. You understand Mr.
22 Groper to be somebody affiliated with the Aurelius Fund, right?

23 A. Yes.

24 Q. And you understand that Mr. Eckstein is one of the
25 committee's lawyers, right?

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1 A. Yes.

2 Q. And you'd agree with me that this appears to be a request
3 by the Aurelius firm to the committee's attorneys for an order
4 that would permit them to participate in the mediation before
5 Judge Peck, right?

6 A. Just repeat that one more time.

7 Q. You would agree with me that this appears to be a request
8 from the Aurelius firm for an order that would permit them to
9 participate in the second mediation before Judge Peck, right?

10 A. Yes, that's what the e-mail exchange between Mr. Groper
11 and Eckstein appear to say.

12 Q. And when you were asked at deposition whether you were
13 aware of the Aurelius fund's request to the committee to
14 participate in mediation you declined to answer on privilege
15 grounds, right?

16 MR. KERR: Objection, Your Honor.

17 THE COURT: This just calls for a yes or no.

18 A. The answer is yes.

19 Q. Nevertheless, you were aware that the Aurelius firm wanted
20 to participate in the mediation process, right?

21 A. Yes.

22 Q. And you were aware that there were discussions to try and
23 get a document that they were comfortable signing, right?

24 A. Yes.

25 Q. And you don't know what the resolution of those

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1 discussions were, right?

2 A. I know the lawyers worked on it. I don't know whether or
3 not they -- I don't know the reasons why they couldn't come to
4 terms.

5 Q. And you don't know, for example, why the debtors did not
6 simply provide the form of confidentiality agreement set forth
7 in Exhibit BBZ to folks that wanted to participate in the
8 second mediation, right?

9 THE COURT: You want to enlighten me, Mr. Perry, why I
10 really care about any of this?

11 MR. PERRY: It is --

12 THE COURT: In other words, why is relevant?

13 MR. PERRY: We are -- okay, on relevance we are
14 reacting --

15 THE COURT: To what?

16 MR. PERRY: -- to decisions that you've written,
17 including your phase 1 decision.

18 I think the participation of my clients in the
19 mediation is something that Mr. Kruger raised directly in his
20 witness statement in connection with the -- in connection with
21 this phase 2 proceeding. And so the suggestion from the other
22 side appears to be that there was some tactical decision not to
23 participate.

24 It's not true. And that's what I'm establishing with
25 this witness, and we're going to go through it with some other

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1 witnesses as well. So that's the proffer.

2 THE COURT: I'll let you do it once. I'm not going to
3 let you -- because I think that the relevance of this is at
4 best -- at best, marginal. So decide which witness you want to
5 do it with. You're not going to do it multiple times. Okay?
6 That's your call.

7 MR. PERRY: Okay. Well, let me move on then.

8 THE COURT: As best I can tell, Mr. Perry, the issues
9 I'm being asked to decide in confirmation or in phase 2 don't
10 require and elaborate history of negotiations of
11 confidentiality agreements. The first one that I actually saw,
12 I would not sign, and there ultimately was one that I did sign.

13 But you know, I'm not sure, I don't think that has any
14 bearing on the specific issues I'm being asked to decide. But
15 I'm going to let you do it once. But you're going to decide
16 with whom.

17 MR. PERRY: Understood, Your Honor. Again, we're just
18 reacting to what --

19 THE COURT: Just ask your next question.

20 BY MR. PERRY:

21 Q. Why don't you go to DX-BCA. Can you identify this
22 document, Mr. Marano?

23 A. Yeah. It's the term sheet for the proposed Chapter 11
24 plan of reorganization.

25 Q. This is the pre-petition term sheet, correct?

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1 A. Yes.

2 Q. And why don't you look at page 7? And I'm looking
3 specifically at Class R8.

4 Are you with me?

5 A. Yeah, I'm there. I'm reading it.

6 Q. Okay. Let me just read it. The box Class R8 is entitled
7 intercompany claims. It states "impaired deemed to reject the
8 plan pursuant to Section 1126(g) of the Bankruptcy Code.
9 Unless the junior secured claims have been paid in full based
10 on their secured claims, allowed intercompany claims shall
11 receive in full satisfaction of such allowed intercompany
12 claims an amount equal to its pro rata share of ResCap
13 unsecured claims pool."

14 Do you see that?

15 A. Yes.

16 Q. And that, in your view, is a poorly written sentence,
17 right?

18 A. Yeah. I struggled with the syntax and the use of certain
19 grammar.

20 Q. Your testimony is that you can't decipher the intent of
21 this provision, correct?

22 A. Just from the way it was written, yes. I'm not a lawyer,
23 so I would have relied on counsel just because of, again, the
24 way the sentence is structured.

25 Q. Okay. And you'd agree with me that it appears to relate

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1 to intercompany claims, right?

2 A. That's correct.

3 Q. Okay. And you don't recall in connection with the pre-
4 petition plan negotiations, Ally insisting that the ResCap
5 intercompany claims be resolved in any particular way, correct?

6 A. At the time, no. There were many things going on. That
7 particular aspect, I just don't recall.

8 Q. Now you do recall discussing the topic of inter-company
9 claims with your chief financial officer Mr. Whitlinger at some
10 point in time, correct?

11 A. That's correct, I believe after the examiner's report and
12 probably before as well. But I definitely recall after the
13 examiner's report.

14 Q. And you discussed with Mr. Whitlinger how the company
15 treated intercompany claims, correct?

16 A. That's correct.

17 Q. And, well let me -- let's take a look at DX-BDD.

18 A. BDB?

19 Q. BDD.

20 A. DD?

21 A. So, B, as in boy, D as in Dan, D as in Dan.

22 This is an e-mail from Mr. Renzi of the FTI firm to Mr.
23 Whitlinger, correct, the first page?

24 A. Yes.

25 Q. And it's dated July 5, 2012, correct?

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1 A. Yes.

2 Q. It appears to attach a letter addressed to the ad hoc
3 group of ResCap's junior secured noteholders from the Aurelius
4 Capital firm, correct?

5 A. Correct.

6 Q. And Mr. Whitlinger, in July of 2012 was the ResCap CFO,
7 correct?

8 A. Correct.

9 Q. And do you see on the -- well, just focusing on the
10 Aurelius letter, is this a letter that you saw in or around
11 July of 2012 when Mr. Renzi sent it to Mr. Whitlinger?

12 A. I actually don't recall this letter.

13 Q. And do you see on the second page of Mr. Brodsky's (sic)
14 letter, there is some text relating to intercompany claims. Do
15 you see that?

16 A. Yes, I do.

17 Q. Okay. And your testimony is, I take it, you don't recall
18 focusing on this particular text in or around July of 2012,
19 correct?

20 MR. KERR: Objection, Your Honor.

21 THE COURT: Sustained.

22 A. I don't recall --

23 THE COURT: No.

24 THE WITNESS: Oh, sorry.

25 THE COURT: When I sustain an objection --

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1 THE WITNESS: Sorry.

2 THE COURT: -- you don't answer the question.

3 THE WITNESS: I'm sorry.

4 Q. Okay. Regardless of the letter, you became aware, did you
5 not, that at some point in time the JSNs began taking the
6 position that the intercompany claims formed part of their
7 collateral, right?

8 A. Yes.

9 Q. And they were taking that position because they believed
10 they had a lien on intercompany claims, correct?

11 MR. KERR: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q. Your understanding is that they were taking that position
14 because they believed they had a lien on intercompany claims,
15 correct?

16 A. I have to be honest with you, I don't know why they took
17 the position. I'm not familiar with these words in this
18 section. I knew they were trying to get it, but I don't know
19 what the reasoning was.

20 Q. Okay. And that was certainly something you understood by
21 the time the parties began their mediation process with Judge
22 Peck, correct?

23 MR. KERR: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q. Did you understand that the JSNs were taking the position

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1 that the allowance of intercompany claims improved their -- the
2 value of their collateral by the time the mediation with Judge
3 Peck commenced?

4 A. No. It wasn't a focus of mine.

5 Q. Okay. And did there come a time ever when it became a
6 focus of yours?

7 A. I would say at some point through the lengthy mediation
8 process I became aware this may be an issue, but I didn't delve
9 into it.

10 Q. Why don't you go to DX-AZA. This is a portion of the
11 examiner's report. I'm going to have some questions about
12 footnote 1812 --

13 THE COURT: I don't see that in the binder. ACA?

14 MR. PERRY: A, Z as in Zorro, A.

15 THE COURT: Hold on.

16 MR. PERRY: It should be the last tab in your binder,
17 Your Honor.

18 THE COURT: Okay, I have it.

19 MR. KERR: Your Honor, just let me note my objection
20 to the use of this.

21 THE COURT: Well, let me hear a question first; and
22 you can frequently use a lot of things that don't come into the
23 evidence. So we'll have to take it one at a time.

24 Q. I'm focused on what should be the last page of the excerpt
25 contained at DX-AZA, and specifically footnote 1812. Are you

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1 with me?

2 A. Yes, I am.

3 Q. You recall focusing on footnote 1812 at some point after
4 the examiner report came out, correct?

5 A. I did see it in the report and I did look at the math.

6 Q. Okay. And, in fact, you talked to your CFO about the tax
7 issues raised in the examiner report, correct?

8 A. Correct.

9 Q. And prior to the examiner report coming out, you had not
10 focused on the potential tax benefits that Ally could receive
11 in connection with the ResCap bankruptcy, correct?

12 A. Correct.

13 Q. And whether or not Ally receives a tax benefit in excess
14 of its 2.1-billion-dollar payment to ResCap, you believe that
15 the 2.1-billion-dollar contribution is sufficient, correct?

16 A. I -- as I said in my testimony and in my deposition, I
17 believe that Ally contributed an enormous amount of money and I
18 think it was a good deal.

19 Q. Okay. And just to put a fine point on it, you as chairman
20 of Residential Capital never factored in what potential
21 benefits Ally was receiving as a result of the settlement
22 contribution, correct?

23 A. I factored in a lot of benefits Ally would receive, but
24 the tax code is the tax code. Ally was making a payment to
25 receive certain relief from litigation, and that's how I viewed

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1 it.

2 You know, we all pay taxes and we all get the benefit of
3 the tax code. I never thought about the tax code.

4 Q. Okay. So the answer to my question is that, no, you did
5 not factor in what potential benefits Ally was receiving as a
6 result of the settlement, correct?

7 A. I did not factor in the tax benefits.

8 MR. PERRY: I have no further questions, Your Honor.

9 THE COURT: Thank you very much, Mr. Perry.

10 Any further cross-examination?

11 Any redirect examination?

12 MR. KERR: No redirect, Your Honor.

13 MR. O'NEILL: Your Honor, may I ask one question?

14 THE COURT: Yes, go ahead.

15 MR. O'NEILL: Mr. Marano, Brad O'Neill on behalf the
16 creditors committee.

17 REDIRECT EXAMINATION

18 BY MR. O'NEILL:

19 Q. Mr. Perry asked you some questions about DX-BCA.

20 THE COURT: Let me find it.

21 Q. Do you recall those?

22 A. I'm at DX-BCA.

23 Q. And in particular he asked you some questions about the
24 box intercompany claims at the top of page 7. Do you recall
25 that?

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1 A. Yes.

2 Q. Can you flip to page 12 of DX-BCA?

3 A. Yes.

4 Q. And looking down about three-quarters of the way on that
5 page, do you see a box "intercompany claims"?

6 A. Yes.

7 Q. What does that say?

8 A. Impaired, deemed to reject the plan pursuant to Section
9 1126(g) of the Bankruptcy Code, holders of intercompany claims
10 shall receive no recovery on account of such claims.

11 MR. O'NEILL: Thank you, Mr. Marano.

12 THE COURT: Thank you Mr. O'Neill.

13 Any further examination? Any redirect, Mr. Kerr?

14 MR. KERR: Your Honor, Charles L. Kerr for the
15 debtors. No redirect.

16 THE COURT: All right. You're excused. Thank you,
17 Mr. Marano.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Maybe somebody could come up and grab his
20 binders while -- unless you're going to use them.

21 MR. KERR: And Your Honor, if I may, this is a good
22 time for us to try to fit some witnesses in. So I just need to
23 do a little adjustment of making sure I have the right folders
24 and binders where I need them to be.

25 THE COURT: Okay. And I do too. So I want to move

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1 and make room for the next group of binders.

2 (Pause)

3 MR. KERR: Your Honor, if you will indulge me. I'm
4 going to put on the trustee witnesses. They're upstairs.

5 THE COURT: Okay.

6 MR. KERR: I've got to bring them down. They're here,
7 but I just --

8 THE COURT: Well, look, let's take a ten-minute
9 recess.

10 MR. KERR: Thank you, Your Honor. I appreciate it.
11 Thank you very much.

12 THE COURT: Ten minutes.

13 (Recess from 10:06 a.m. until 10:20 a.m.)

14 THE COURT: Please be seated.

15 Mr. Kerr.

16 MR. KERR: Your Honor, Charles Kerr, Morrison &
17 Foerster.

18 Your Honor, we have done some rearranging of boxes.
19 What I would like to do now is to go through a series of the
20 witnesses for the trustees -- the RMBS trustees. I believe
21 there is a stipulation between the JSNs and the trustees that
22 they will not be crossed subject to the terms of the
23 stipulation.

24 MR. COHEN: That's correct. And I believe that was
25 filed on the docket.

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1 MR. KERR: It was filed at number 5872.

2 THE COURT: So I didn't see it. Just give me the gist
3 of it.

4 You can either read it or just tell me what

5 MR. COHEN: What the gist of it is, is if we were to
6 cross-examine the trustees, they would either invoke mediation
7 confidentiality, attorney-client privilege or lack of
8 knowledge.

9 THE COURT: Okay. That's fine.

10 MR. COHEN: Thank you.

11 THE COURT: Okay.

12 MR. KERR: So in light of that stipulation, I
13 understand they're not going to cross the trustees. But we
14 want to offer up their -- is that correct?

15 MR. COHEN: That's correct.

16 THE COURT: Okay.

17 MR. KERR: Okay. So with that, Your Honor, I'm going
18 to go through a series of trustees. I'll do them one at a
19 time.

20 THE COURT: Okay.

21 MR. KERR: Your Honor, the first one is Mamta Scott.

22 And let me just say, in support of the joint Chapter
23 11 plan proposed by the debtors the unofficial committee -- the
24 official committee of unsecured creditors, debtors offer the
25 direct testimony of Mamta K. Scott, dated November 12, 2013,

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1 which was filed as docket number 5683.

2 If Ms. Scott was called to testify, she would testify
3 to what is in her direct written testimony.

4 THE COURT: Okay.

5 When you finish all of them, I don't know what
6 exhibits are being offered with them but --

7 MR. KERR: What we're going to do, Your Honor, I'm
8 going to do it one at a time and I'll offer the exhibits one at
9 a time.

10 THE COURT: That's fine.

11 MR. KERR: So we'll do it that way.

12 THE COURT: All right.

13 MR. KERR: So we therefore offer Ms. Scott's direct
14 testimony in factual support of the plan confirmation.

15 THE COURT: Any objections?

16 Hearing no objections, the direct testimony of Mamta
17 Scott, 5683 is admitted in evidence.

18 (Direct testimony of Mamta Scott was hereby received into
19 evidence as Plan Proponents' Exhibit 1500, as of this date.)

20 MR. KERR: And, Your Honor, just to -- again, for
21 logistics -- we have a binder. And as I understand it, direct
22 written testimony that was actually filed, attached the
23 exhibits to it that were referenced in there. So I'm going to
24 read the exhibits by exhibit number.

25 THE COURT: Here is what I would like. Since I've got

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1 copies of all of the exhibits, all right -- so for those who
2 are not being cross-examined, I don't need it right at this
3 minute, but I would like to get just the direct testimony. It
4 references exhibit numbers. But so that I don't have to go --
5 I've read some of the direct testimony, not all of the direct
6 testimony at this point -- and so that I don't have to have
7 duplication of all the exhibits -- yes, I know the direct
8 testimony is here as well. But so I don't need it right now,
9 but either the end of the day today or tomorrow morning, if I
10 could just be given just a copy of the witness statement --
11 direct testimony statements of the witnesses, that would be
12 helpful.

13 MR. KERR: And we'll make that happen, Your Honor.

14 THE COURT: That's fine.

15 MR. KERR: But, however, I would like to, for the
16 record --

17 THE COURT: Yeah, I do want to make sure the exhibits
18 get identified.

19 MR. KERR: So in connection with Ms. Scott's direct
20 testimony, we also offer the following exhibits, all of which
21 have been previously identified on the trial exhibit list, and
22 they are -- first off, actually her direct testimony is Exhibit
23 1500, but the additional exhibits we're going to be offering in
24 through Ms. Scott are 1501, 1502, 1503, 1504, 1505, 1506, 1507,
25 1508, 1509, 1510, 1511, 1512 and 1513, Your Honor.

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1 THE COURT: Are there any objections to the exhibits
2 that Mr. Kerr has just identified?

3 MR. COHEN: We have no objections, Your Honor.

4 THE COURT: All right. Hearing no objections from
5 anyone, Exhibits 1501, 1502, 1503, 1504, 1505, 1506, 1507,
6 1508, 1509, 1510, 1511, 1512, and 1513 are all admitted in
7 evidence.

8 (Exhibits regarding Ms. Scott's testimony were hereby received
9 into evidence as Plan Proponents' Exhibits 1501, 1502, 1503,
10 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, and 1513,
11 as of this date.)

12 MR. KERR: Thank you, Your Honor.

13 For the next direct testimony in support of the joint
14 Chapter 11 plan proposed by the debtors and the official
15 committee of unsecured creditors, the debtors offer the direct
16 testimony of Robert H. Major dated November 12, 2013 which was
17 filed as docket entry number 5677.

18 If Mr. Major were called to testify, he would testify
19 as to what is in his written direct testimony. We therefore
20 offer his written direct testimony in factual support of the
21 consolidated proceedings and the plan confirmation.

22 THE COURT: Does that have an exhibit number as well?

23 MR. KERR: It is Exhibit 1515, Your Honor.

24 THE COURT: All right. Any objections?

25 Hearing none, the direct testimony of Robert H. Major,

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1 which is Exhibit 1515, and is on ECF as 5677, is in evidence.
2 (Direct testimony of Robert Major was hereby received into
3 evidence as Plan Proponents' Exhibit 1515, as of this date.)

4 MR. KERR: And in connection with Mr. Major's direct
5 testimony, Your Honor, we also offer the following exhibits,
6 all of which were previously identified on the plan proponents'
7 trial exhibit list. They are Exhibit 1516, 1517, 1518, 1519,
8 1520, 1521, 1522, 1523, and 1524.

9 THE COURT: All right. Are there any objections to
10 the exhibits that Mr. Kerr just identified?

11 MR. COHEN: We have no objection to the admission of
12 the exhibits for the limited purpose, they're hearsay but
13 they're notice letters.

14 THE COURT: Is that correct, Mr. Kerr?

15 MR. ESPANA: One clarification.

16 THE COURT: You just have to identify yourself,
17 please.

18 MR. ESPANA: Mauricio Espana, Dechert, on behalf of
19 Bank of New York Mellon entities.

20 Most of the exhibits are notices or governing
21 agreements except for three of them which is 1515, 1518 and
22 1522, which are Mr. Major's declarations submitted here and in
23 the prior proceedings, and those were submitted --

24 THE COURT: 1515 is already admitted in evidence.
25 What was the other?

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1 MR. ESPANA: 1518 and 1522.

2 THE COURT: Okay.

3 MR. ESPANA: Those were the other additional two.

4 Those are Mr. Major's prior declarations submitted in the FGIC
5 9019.

6 MR. COHEN: That's fine. No objection as to those.

7 THE COURT: All right. So exhibits 1516, 1517,
8 1518 -- let me leave 1518 -- 1516, 1517, 1519, 1520, 1521, 1523
9 and 1524 are all admitted for the limit purpose as notices.

10 Exhibits 1518 and 1522, which are Mr. Major's prior
11 testimony, is admitted in evidence without the same
12 restriction.

13 (Exhibits regarding Mr. Major's testimony were hereby received
14 into evidence as Plan Proponents' Exhibits 1516, 1517, 1518,
15 1519, 1520, 1521, 1522, 1523, and 1524, as of this date.)

16 MR. COHEN: Correct. Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 MR. KERR: Your Honor, Charles Kerr.

19 The next one; in support of the joint Chapter 11 plan
20 proposed by the debtors and the official committee of unsecured
21 creditors, the debtors offer the direct testimony of Brendan
22 Meyer, M-E-Y-E-R, dated November 12, 2013, which was filed as
23 docket number 5690. It was also listed as Exhibit 1530 in the
24 list of exhibits, Your Honor.

25 If Mr. Meyer was called to testify, he would testify

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1 to what is in his written direct testimony. We therefore offer
2 his written direct testimony, in factual support of the
3 consolidated proceedings and the plan confirmation.

4 THE COURT: Are there any objections?

5 All right. Mr. Meyer's -- I don't know if he
6 pronounces it [May-er] or [My-er], but his testimony is
7 admitted. It's Exhibit PX-1530 and it's on ECF as 5690.
8 That's in evidence.

9 (Direct testimony of Brendan Meyer was hereby received into
10 evidence as Plan Proponents' Exhibit 1530, as of this date.)

11 MR. KERR: In connection with Mr. Meyer's testimony,
12 Your Honor, we also offer the following exhibits, all of which
13 were previously identified on our exhibit list and marked for
14 identification. They are Exhibits 1531, 1532, 1533, 1534 and
15 1535.

16 THE COURT: All right. Are there any objections to
17 those exhibits?

18 MR. COHEN: Your Honor, not as to 1533, but with
19 respect to the others, we have no objection if they're offered
20 for a limited purpose.

21 THE COURT: Not hearing -- Mr. Garrity, are you coming
22 up?

23 MR. GARRITY: Yes, Your Honor.

24 THE COURT: Okay. Just take your time.

25 MR. GARRITY: Good morning, Your Honor. Jim Garrity

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1 from Morgan Lewis on behalf of Deutsche Bank and counsel to Mr.
2 Meyer. We agree to the limitation as set forth.

3 THE COURT: All right. 1533, I take it, doesn't have
4 the same limitations, Mr. Cohen?

5 MR. COHEN: That's correct. It's a declaration.

6 THE COURT: All right. So Exhibits 1531, 1532, 1534
7 and 1535 are admitted for the limited purpose, and 1533
8 admitted without restriction. Thank you.
9 (Exhibits regarding Mr. Meyer's testimony were hereby received
10 into evidence as Plan Proponents' Exhibits 1531, 1532, 1533,
11 1534 and 1535, as of this date.)

12 MR. COHEN: Thank you, Your Honor.

13 MR. KERR: Next, Your Honor, in support of the joint
14 Chapter 11 plan proposed by the debtors and the official
15 committee of unsecured creditors, debtors offer the direct
16 testimony of Mary Sohlberg, dated November 12, 2013, which was
17 filed as docket number 5680. It was also listed as Exhibit
18 1545 on the plan proponents' exhibit list.

19 THE COURT: All right. Any objections?

20 MR. COHEN: No objection.

21 THE COURT: All right. The direct testimony of Mary
22 Sohlberg, Exhibit 1545, also on ECF as 5680 is in evidence.
23 (Direct testimony of Mary Sohlberg was hereby received into
24 evidence as Plan Proponents' Exhibit 1545, as of this date.)

25 MR. KERR: Your Honor, in connection with Ms.

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1 Sohlberg's direct testimony, we also offer the following
2 exhibits, all of which were previously identified on the plan
3 proponents' trial exhibit list, and they are Exhibit number
4 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555,
5 1556, 1557.

6 THE COURT: Are there any objections?

7 MR. COHEN: Your Honor, we have no objection to 1554,
8 which is a declaration. With respect to the other exhibits
9 identified by Mr. Kerr, we would have no objection, if they are
10 introduced into evidence for a limited purpose.

11 MR. KERR: Your Honor, I would just note --

12 MR. COHEN: No objection on 1555.

13 THE COURT: Let me hear from the sponsors.

14 MR. JOHNSON: Good morning, Your Honor, Michael
15 Johnson from Alston & Bird on behalf of Wells Fargo Bank as
16 trustee.

17 THE COURT: Good morning.

18 MR. JOHNSON: We agree to the limitation in respect of
19 the exhibits that Mr. Kerr just read off except for the
20 declaration, which is Exhibit number 1554.

21 THE COURT: Okay. So Exhibits 1546, 1547, 1548, 1549,
22 1550, 1551, 1552, 1553, 1555, 1556 and 1557 are admitted for
23 the limited purpose, and 1554 is admitted without limitation.

24 MR. COHEN: Correct, Your Honor, thank you.

25 (Exhibits regarding Ms. Sohlberg's testimony were hereby

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1 received into evidence as Plan Proponents' Exhibits 1546, 1547,
2 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, as
3 of this date.)

4 THE COURT: Thank you very much.

5 MR. KERR: The next thing I'd like to do, Your Honor,
6 in support of the joint Chapter 11 plan proposed by the debtors
7 and the official committee of unsecured creditors, the debtors
8 offer the direct testimony of Thomas Musarra, dated November
9 12, 2013.

10 THE COURT: Just spell the last name for me.

11 MR. KERR: It's M-U-S-A-R-R-A. I apologize if I
12 didn't pronounce it correctly.

13 THE COURT: I wouldn't know, so.

14 MR. KERR: But it was filed as docket entry 5675. It
15 was actually listed on our exhibit list as Exhibit 1560.

16 THE COURT: All right. Any objections to Mr.
17 Musarra's direct testimony?

18 Hearing none, the direct testimony of Thomas Musarra,
19 which is on ECF as 1575 and marked as PX-1560 is admitted in
20 evidence.

21 (Direct testimony of Thomas Musarra was hereby received into
22 evidence as Plan Proponents' Exhibit 1560, as of this date.)

23 MR. KERR: Next, Your Honor, in support --

24 THE COURT: No exhibits?

25 MR. KERR: No exhibits to that one, Your Honor.

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1 THE COURT: Okay.

2 MR. KERR: In support of the joint Chapter 11 plan
3 proposed by the debtors and the official committee of unsecured
4 creditors, the debtors offer the affidavit regarding
5 dissemination of notices and information to RMBS trust
6 certificate holders of Mr. Fraga. And I don't have Mr. Fraga's
7 first name. I apologize.

8 Jose Fraga. And that was dated November 12, 2013, and
9 it was filed with ECF as docket number 5687, and it is listed
10 as Exhibit 1580 on our exhibit list, Your Honor.

11 If Mr. Fraga was here -- if Mr. Fraga was called to
12 testify, he would testify as to what is in his affidavit.

13 THE COURT: All right. Any objections?

14 MR. COHEN: No objection.

15 THE COURT: All right. The direct testimony of Jose
16 Fraga on ECF as 5687 and marked as Proponents' Exhibit 1580 is
17 in evidence.

18 (Testimony of Jose Fraga was hereby received into evidence as
19 Plan Proponents' Exhibit 1580, as of this date.)

20 MR. KERR: Your Honor, in connection with Mr. Fraga's
21 direct testimony, we also offer the following exhibits, all of
22 which were previously identified on the plan proponents' trial
23 exhibit list. They are Exhibits 1581, 1582, 1583, 1584, 1585,
24 1586, 1587, 1588, 1589 and 1590.

25 THE COURT: Are there any objections to these

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1 exhibits?

2 MR. COHEN: Your Honor, with respect to Exhibit 1582,
3 we have no objection. With respect to the other exhibits
4 identified by Mr. Kerr, we have no objection provided they're
5 admitted for the limited purpose of establishing notice.

6 THE COURT: All right, may I hear the sponsor's
7 counsel?

8 MR. KOTWICK: Good morning, Your Honor, Mark Kotwick
9 of Seward & Kissel on behalf of U.S. Bank, as well as speaking
10 for Garden City Group who employs Mr. Fraga. We have no
11 problem with the limitations.

12 THE COURT: All right.

13 So Exhibit 1582 is admitted for all purposes. And
14 then exhibits 1581, 1583, 1584, 1585, 1586, 1587, 1588, 1589
15 and 1590 are all admitted in evidence for the limited purpose.
16 (Exhibits regarding Mr. Fraga were hereby received into
17 evidence as Plan Proponents' Exhibit 1581, 1582, 1583, 1584,
18 1585, 1586, 1587, 1588, 1589 and 1590, as of this date.)

19 MR. KERR: Next, Your Honor, in support of the joint
20 Chapter 11 plan proposed by the debtors and the official
21 committee of unsecured creditors, the debtors offer the direct
22 testimony of Allen M. Pfeiffer dated November 12, 2013 which
23 was filed as docket number 5682 and was listed as Exhibit 1600
24 on our exhibit list.

25 If Mr. Pfeiffer was called to testify, he would

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1 testify to what is in his written direct testimony.

2 THE COURT: Are there any objections to Mr. Pfeiffer's
3 direct testimony?

4 MR. COHEN: No objection, Your Honor.

5 THE COURT: All right. The direct testimony of Allen
6 Pfeiffer on ECF as 5682 and marked as Plaintiff's (sic) Exhibit
7 1600 is in evidence.

8 (Direct testimony of Allen Pfeiffer was hereby received into
9 evidence as Plan Proponents' Exhibit 1600, as of this date.)

10 MR. KERR: And, Your Honor, in connection with Mr.
11 Pfeiffer's direct testimony, we also offer the following
12 exhibits, all of which were previously identified on the plan
13 proponents' trial exhibit list, those are Exhibits 1600-1,
14 1600-2 and 1600-3.

15 THE COURT: Mr. Cohen?

16 MR. COHEN: We have no objection to the admission of
17 those three exhibits into evidence for a limited purpose.

18 THE COURT: Mr. Johnson?

19 MR. JOHNSON: Michael Johnson. We agree to the
20 limitation.

21 THE COURT: All right. Exhibits PX-1600-1, 1600-2 and
22 1600-3 are admitted into evidence for a limited purpose.

23 (Exhibits regarding Mr. Pfeiffer's testimony was hereby marked
24 for identification as Plan Proponents' Exhibit 1600-1, 1600-2,
25 1600-3, as of this date.)

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1 MR. KERR: Your Honor, we're just going to shift here.
2 I'm going to ask Mr. Rains come up to do the next two witness
3 who I believe should not be subject to cross-examination.

4 THE COURT: So you're letting Mr. Rains do it?

5 MR. KERR: You know, he just sits there. He's anxious
6 to do something.

7 MR. RAINS: Your Honor, with our witness, Mr. Lipps,
8 I --

9 THE COURT: Just identify yourself again. I'm sorry,
10 Mr. Rains.

11 MR. RAINS: I'm sorry. Darryl Rains of Morrison &
12 Foerster for the debtors.

13 THE COURT: Let's let -- there are some people who are
14 excusing themselves, which is quite all right. But let's just
15 wait until they clear, okay?

16 MR. RAINS: Your Honor, I wanted to note that I had
17 one job with Mr. Lipps and that was to get his exhibits into
18 evidence and we weren't able to do that. I'm going to try
19 again this time and maybe -- these witnesses don't have any
20 exhibits, so I think we might have a better chance of getting
21 this done.

22 Your Honor, our next witness in support of plan
23 confirmation is Frank Sillman. Mr. Sillman is an expert
24 witness from Fortis. His direct testimony was filed previously
25 on ECF on November 12th, it's docket number 5703. The debtors

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1 now offer into evidence Mr. Sillman's direct testimony.

2 THE COURT: Is it marked as an exhibit as well.

3 MR. RAINS: It is not, Your Honor we didn't do that
4 for our direct testimony.

5 THE COURT: That's fine. That's fine. Are there any
6 objections to Mr. Sillman's direct testimony?

7 MR. COHEN: No objection.

8 THE COURT: All right. The direct testimony of Frank
9 Sillman, which is on ECF as 5703 is admitted into evidence.
10 (Direct testimony of Frank Sillman was hereby received into
11 evidence as Plan Proponents' Exhibit, as of this date.)

12 MR. RAINS: Your Honor, we'll hand that up to you at
13 this time. Mr. Sillman is here. He's available for cross-
14 examination, if that's needed.

15 THE COURT: Does anybody wish to cross-examine Mr.
16 Sillman?

17 MR. COHEN: The JSNs do not, Your Honor.

18 THE COURT: Anyone else?

19 Mr. Sillman, it was an easy day for you.

20 Very good, Mr. Rains.

21 MR. RAINS: Thank you. Court reporter, would you
22 please mark that as part of the transcript?

23 THE COURT: If that's what it takes to make your day.

24 MR. RAINS: Your Honor, our next witness, also an
25 expert witness, is Ms. Lucy Allen from NERA. And her testimony

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1 was filed on November 12 as docket number 5706.

2 Now yesterday Ms. Allen discovered a small error in
3 her work. Basically her work is taking the securities
4 settlement and the New Jersey Carpenters settlement and
5 comparing them to twelve other recent settlements.

6 She found that one of the data items for one of the
7 other settlements was erroneous. She's redone her testimony.
8 It moves the placement of that settlement which was the WaMu
9 settlement up and down in their tables, it does not change any
10 of the text or any of her conclusions.

11 THE COURT: Have you shared that information with
12 opposing counsel?

13 MR. RAINS: We have. We filed it last night on ECF as
14 well. The new number for the corrected testimony is 5879.

15 So what we'd like to do is offer her corrected
16 testimony into evidence, 5879, at this time.

17 THE COURT: Mr. Cohen?

18 MR. COHEN: No objection.

19 THE COURT: All right. Any --

20 MR. RAINS: She's got no exhibits and she's available
21 to be cross-examined.

22 THE COURT: The direct testimony of Lucy Allen, the
23 corrected direct testimony of Lucy Allen, which is on ECF as
24 5879, is admitted in evidence.

25 (Corrected direct testimony of Lucy Allen was hereby received

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1 into evidence as Plan Proponents' Exhibit, as of this date.)

2 THE COURT: Does anybody wish to cross-examine Ms.
3 Allen?

4 MR. COHEN: The JSNs do not, Your Honor.

5 THE COURT: All right.

6 MR. RAINS: Thank you, Your Honor.

7 THE COURT: Very good again, Mr. Rains.

8 MR. O'NEILL: Your Honor, Brad O'Neill for the
9 unofficial (sic) creditors committee.

10 The committee would like to offer the direct testimony
11 of Ronald J Friedman in support of confirmation and
12 consolidated adversary proceedings. The direct testimony is at
13 docket number 5710. If called to testify Mr. Friedman would
14 testify to the contents of his direct testimony.

15 THE COURT: Any objections?

16 MR. COHEN: No, Your Honor.

17 THE COURT: All right. Mr. Friedman's direct testimony
18 5710 on ECF is in evidence.

19 (Direct testimony of Ronald Friedman was hereby received into
20 evidence as Plan Proponents' Exhibit, as of this date.)

21 MR. O'NEILL: There are no exhibits, Your Honor.

22 THE COURT: All right. Does anybody wish to cross-
23 examine, Mr. Friedman?

24 MR. COHEN: We do not, Your Honor.

25 THE COURT: You know, I might like to, but I'll spare

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1 Mr. Friedman from that. Okay. All right, so Mr. Friedman's
2 testimony is in evidence.

3 Just for those who don't know, Mr. Friedman appears in
4 this court in other matters with some frequency, so. I'll give
5 him a hard time in those cases rather than this one.

6 Okay, Mr. Kerr?

7 MR. KERR: One second, Your Honor. I'm just getting
8 something out.

9 THE COURT: Sure.

10 MR. KERR: I need to adjust my glasses, Your Honor.
11 Just one second. Your Honor, on behalf of the debtors and the
12 official committee of unsecured creditors, we'd like to offer
13 the written direct testimony at this time of Michael Carpenter,
14 which was filed as docket number 5695.

15 Mr. Carpenter, if he was asked to testify as to what
16 is in his direct, he would testify on the stand. He is
17 available here to be cross-examined.

18 THE COURT: Does anybody anticipate cross-examining
19 Mr. Carpenter?

20 MS. MILLER: Yes, Your Honor. Atara Miller of
21 Milbank, Tweed, Hadley & McCloy on behalf --

22 THE COURT: Okay, come on up, Mr. Carpenter, and be
23 sworn.

24 Any objections to the direct testimony?

25 MS. MILLER: No, Your Honor.

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1 THE COURT: All right. So the direct testimony of Mr.
2 Carpenter is admitted into evidence.

3 (Direct testimony of Michael Carpenter was hereby received into
4 evidence as Plan Proponents' Exhibit, as of this date.)

5 THE COURT: Mr. Carpenter, if you'd raise your right
6 hand and be sworn.

7 (Witness sworn)

8 THE COURT: All right. Please have a seat.

9 Tell me your name again, I'm sorry.

10 MS. MILLER: Atara Miller, Milbank, Tweed, Hadley &
11 McCloy, on behalf of the JSNs.

12 THE COURT: Thank you, Ms. Miller.

13 CROSS-EXAMINATION

14 BY MS. MILLER:

15 Q. Good morning, Mr. Carpenter.

16 A. Good morning.

17 Q. I think it's still morning. Mr. Carpenter, you joined the
18 board of directors of Ally Financial in May 2009, right?

19 A. Correct.

20 Q. And you've been the CEO of Ally since November of 2009,
21 right?

22 A. Correct.

23 Q. And since you joined the Ally board in May 2009, you've
24 monitored ResCap's financial condition, correct?

25 A. Correct.

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1 Q. And as CEO of Ally, you knew from the time that you
2 assumed that position that ResCap had net worth covenants that
3 it had to comply with, right?

4 A. Correct.

5 Q. And you understood that government sponsored entities,
6 which I'm going to refer to as GSEs, like Fannie and Freddie
7 imposed net worth covenants on ResCap, right?

8 A. Correct.

9 Q. And you knew also that there would be serious consequences
10 if ResCap didn't meet its net worth covenants with the GSEs,
11 right?

12 A. Correct.

13 Q. The GSEs could seize ResCap's mortgage servicing rights,
14 for example?

15 A. Correct.

16 Q. And the mortgage servicing rights were a substantial asset
17 on ResCap's balance sheet, right?

18 A. Correct.

19 Q. ResCap had about 1.1 billion dollars in MSR assets, right?

20 A. Correct.

21 Q. And the GSEs could seize the MSRs as of right without
22 having to prove anything to anybody, right?

23 A. I believe that's true.

24 Q. And you also knew from the time that you joined the Ally
25 board that ResCap also had to satisfy net worth covenants in

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1 its banking facilities, right?

2 A. Correct.

3 Q. And --

4 THE COURT: I missed the last part of your question,
5 what facilities?

6 MS. MILLER: Banking.

7 THE COURT: Okay. I just didn't hear you. Thank you
8 very much.

9 Q. And ResCap had five separate bank facilities, right?

10 A. I have no idea.

11 Q. Okay. And if ResCap blew a covenant in one of the bank
12 facilities, there would be an immediate event of default with
13 no cure period, right?

14 A. Possibly. I'm not the treasurer of the company. So I
15 would have to -- I would consult the treasurer of the company
16 and say what would the implications be. But I -- that's
17 probably true.

18 Q. And if that did happen that ResCap failed to comply with
19 one of the covenants in its bank facilities and there was an
20 immediate event of default with no cure period, the banks would
21 have the right to immediately call the loans, right?

22 MR. KERR: Objection.

23 THE COURT: Sustained.

24 Q. Mr. Carpenter, I'd like you to look at a document in your
25 binder DX-BAR, which is an e-mail from Lara Hall to you, dated

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1 Monday, September 26, 2011?

2 A. DB --

3 THE COURT: I think there's a problem, and they just
4 got put in out of order. In the binder I was handed, DX-BAR is
5 actually behind the tab for DX-BAQ, but they just got switched.
6 I have it, go ahead.

7 Do you have the right exhibit, Mr. Carpenter?

8 THE WITNESS: Yes, I do.

9 THE COURT: Go ahead, it just got switched in the
10 binder.

11 MS. MILLER: It is --

12 THE COURT: I have it. It's marked --

13 MS. MILLER: -- in the reverse alphabetical order.

14 THE COURT: No, the tab is incorrect, but that's okay.

15 MS. MILLER: Apologies.

16 THE COURT: It just got switched. I have it.

17 MS. MILLER: Good.

18 BY MS. MILLER:

19 Q. Mr. Carpenter, is this an e-mail that you've seen before?

20 A. Yes, because you showed it to me the other day.

21 Q. I did show it to you the other day.

22 And do you recall testifying about this document?

23 A. Yes.

24 Q. And do you recall testifying that, in fact --

25 THE COURT: Just ask him questions. If what you're

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1 trying is impeachment, it's improper; and so just ask him
2 questions, and then if you want to use the deposition, you can.
3 But -- okay?

4 MS. MILLER: Okay.

5 Q. Mr. Carpenter, do you believe that you received this
6 e-mail in September of 2011?

7 A. I have no reason to believe I didn't.

8 Q. Okay. And do you know what this e-mail is referring to?

9 A. Yes.

10 Q. And what's it talking about?

11 A. This is a period of time you may all remember, robo-
12 signing, in which the mortgage industry was slapped with a
13 twenty-five-billion-dollar fine by the government, by the DOJ
14 and the Attorneys General. We were in of the middle of
15 negotiating -- ResCap was in the middle of negotiating what its
16 share of that settlement might be. It was in a very wide
17 range. And depending on the size of that settlement, it could
18 potentially cause ResCap to violate some of the covenants that
19 you just discussed.

20 Q. And who's Ms. Hall?

21 A. Lara Hall is one of our senior financial people, spends a
22 lot of time on our capital markets activity.

23 Q. And in the second paragraph of this document Ms. Hall
24 writes on the third line, "All of the banking parties will have
25 the ability to accelerate and the GSEs will have the right to

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1 full servicing."

2 Does that refresh your recollection that, in fact, if
3 ResCap defaulted on one of its net worth covenants in its
4 banking facilities, the banks would have the ability to
5 accelerate the loans?

6 A. I knew it wasn't a good thing.

7 Q. Because if ResCap didn't have the cash to repay the loans,
8 it would have been in default, right?

9 A. Yes, continuing that logic train, yes.

10 Q. And that would have put ResCap out of business continuing
11 that logic train one step further, right?

12 A. Yes, theoretically.

13 Q. And ResCap reaching its net worth covenants would have
14 also had bad consequences for Ally, right?

15 A. To the ex -- depending on what happened, conceivably, yes.

16 Q. If ResCap breached its covenants, that would have been a
17 disclosable event for Ally, right?

18 A. Yes.

19 Q. And Ally wouldn't want to have to disclose a bad material
20 event, right?

21 MR. KERR: Objection.

22 THE COURT: Sustained.

23 Q. As CEO of Ally, you negotiated the settlement of potential
24 claims with ResCap before the bankruptcy filing, right?

25 A. We negotiated a global settlement with ResCap before the

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1 bank -- with the ResCap board on an arm's-length basis to cover
2 the support that we would provide, the financial settlement
3 that we would agree to enter into, and under the condition that
4 all claims, third-party and estate claims, would be released.

5 Q. And you continued to lead the negotiations for Ally
6 throughout the mediation with Judge Peck, right?

7 A. Correct.

8 Q. And throughout all of the negotiations, both pre-petition
9 and the more recent mediation, the one thing that Ally really
10 cared about was getting a full release from the debtors and all
11 third parties, right?

12 A. It's not the only thing we cared about. It was a sine qua
13 non.

14 Q. And as long as Ally gets its release, Ally is willing to
15 write a check for the 2.1-billion-dollar settlement amount,
16 right?

17 A. Correct.

18 Q. And Ally is not conditioning its payment of the settlement
19 on the settlement of intercompany claims, for example?

20 A. I'd have to defer to my lawyers, but I don't believe so.

21 Q. And, in fact, Ally is indifferent about how ResCap's
22 creditors divide up the contribution, right?

23 A. That's what I said the other day. That's what I'd say
24 today.

25 Q. I think you said it more colorfully then.

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1 A. Okay. Well, I've got a bigger audience today. And a
2 prestigious judge, so I have to be very careful.

3 MS. MILLER: We broadcast from the deposition.

4 Q. And as part of the mediation process, Mr. Carpenter, you
5 didn't consider the value of the claims that could be asserted
6 against Ally, right?

7 A. The way I would describe it is, we had done a detailed
8 analysis of all the potential allegations and claims that could
9 be made against us before we entered into a negotiation, and we
10 had concluded that there was no material claims that could be
11 asserted that would be, in our judgment, of value or upheld.

12 Q. Okay. So focusing on the mediation, and I'm going to go
13 back to the pre-petition negotiation. But focusing first on
14 the mediation before Judge Peck, the merits of the causes of
15 action weren't really part of the conversation at mediation,
16 right?

17 MR. KERR: Objection, Your Honor.

18 THE COURT: Sustained.

19 Ms. Miller you haven't been before me before, but
20 there is a long history about anyone inquiring about the
21 substance of what was discussed in the mediation.

22 I've been absolutely consistent in my rulings, which
23 is that the mediation privilege applies to whatever was
24 discussed during the mediation. I'm not going to permit -- you
25 can ask your questions, they're going to wind up with

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1 objections and they're going to wind up with me sustaining it.

2 MS. MILLER: Your Honor, understood.

3 THE COURT: Go ahead, ask your questions.

4 MS. MILLER: Okay. I will say that there were --

5 THE COURT: Ask your questions.

6 MS. MILLER: The answers were solicited and there was
7 no objection put on the record at the deposition.

8 THE COURT: Well, there was now, and I sustained the
9 objection.

10 MS. MILLER: Okay. Understood.

11 Q. Mr. Carpenter, you're the person at Ally most
12 knowledgeable about the claims that are being settled as part
13 of the global settlement, right?

14 A. I wouldn't say that, no.

15 Q. Do you know that you were identified in this case as the
16 30(b)(6) witness on behalf of Ally, specifically on the topic
17 of the claims settled as part of the global settlement?

18 A. Let me define my terms here, okay? Which is, can I debate
19 with anybody individual claims against Ally, no. Am I
20 knowledgeable about what Ally's position was vis-a-vis the
21 claims collectively and in general; the answer to that is yes

22 Q. And going back even pre-petition, you understood that
23 ResCap believed that it had claims that could be asserted
24 against Ally, right?

25 A. You mean around the time -- clarify your time frame. You

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1 mean around the time of the filing, is that what you're talking
2 about?

3 Q. I think what I would classify as winter, January, February
4 time period. I think you might characterize that as spring.
5 But the January through pre-petition period, January through
6 May of 2012?

7 A. Was I aware that ResCap had studied what it thought its
8 claims were against Ally? Yes.

9 Q. And ResCap's lawyers made a presentation to Ally about
10 those claims, right?

11 A. They made a presentation to Ally's counsel about these
12 claims --

13 Q. And --

14 A. -- not to me.

15 Q. Sorry. And you reviewed that presentation, right?

16 A. I did.

17 Q. And do you recall what claims were the focus of that
18 presentation?

19 A. I don't remember all of them. It's so long ago.

20 Q. Do you remember that it focused on alter ego and veil
21 piercing and fraudulent conveyance claims?

22 A. I mean, obviously I was aware that those claims would be
23 included in that document, yes.

24 Q. And you thought that the presentation was a joke, right?

25 A. Correct.

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1 Q. And in fact, I think you described it to me as fantasy,
2 what in the wildest dreams, what kind of garbage you could
3 conjure up, right?

4 A. Well, I mean, they were paid to come up with an argument
5 for a big number, and that's what they did. And they did a
6 good job. I think the examiner's report made it very clear
7 that piercing of the veil claims and fraudulent conveyance
8 claims didn't exist.

9 Q. And you believed even in the pre-petition negotiation
10 period that those claims against -- as asserted against Ally
11 had no merit, right?

12 A. Correct.

13 Q. And it's your position that the settlement payment bears
14 no relation to the merits of the claims against Ally, right?

15 A. Correct.

16 Q. And in particular, you believe that about the veil
17 piercing and the alter ego theories, right?

18 A. I believe that about all the claims.

19 Q. And you also believe that the third-party claims against
20 Ally have no merit, right?

21 A. We think they're very weak.

22 Q. And that's because you know that there is a clear --
23 sorry -- that's because you know that with respect to the rep
24 and warranty claims you think that there is a clear contractual
25 determination that that is ResCap's.

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1 MS. MILLER: Well, let me restate that.

2 Q. With respect to the rep and warranty claims, it's your
3 position that it's very clear that that is ResCap's contractual
4 obligation, right?

5 A. The ResCap claims are contractual obligations. ResCap was
6 an S-1 filer. ResCap disclosed everything it needed to
7 disclose. They were clearly contractual obligations of ResCap,
8 not obligations of the parent.

9 Q. And you've been public about that position going back to
10 November of 2011, right?

11 A. Correct.

12 Q. Mr. Carpenter, you reviewed the executive summary of the
13 examiner report, right?

14 A. Correct.

15 Q. And your reaction, which I think you already touched on,
16 was that Ally's position with respect to veil piercing and
17 alter ego was vindicated?

18 A. Correct.

19 MR. KERR: Objection, Your Honor.

20 THE COURT: He answered already. So --

21 Q. And you felt the same way about the fraudulent conveyance
22 claims, right?

23 MR. KERR: Objection.

24 THE COURT: Sustained.

25 A. Our negotiation --

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1 THE COURT: No.

2 Q. No, you can't answer.

3 A. Sorry.

4 THE COURT: Wait for another question. I mean if you're
5 absolutely insistent on speaking.

6 THE WITNESS: No, no, it's okay. It's okay. I know when
7 I'm not to.

8 Q. Did you agree with the examiner about the fraudulent
9 transfer claims?

10 MR. KERR: Objection.

11 THE COURT: Sustained.

12 Q. Mr. Carpenter, you've seen a lot of claims against -- a
13 lot of potential claims against Ally presented to you, right?

14 A. I've seen the same ones you have.

15 Q. And what was your reaction to those claims?

16 A. That's a very sweeping question. We did an enormous
17 amount of due diligence of a legal nature before we decided to
18 withdraw support from ResCap, knowing that would cause ResCap's
19 filing. And the results of that analysis were to give us a
20 great deal of confidence in our legal position vis-a-vis the
21 claims that might be asserted.

22 And all of that had nothing to do with the settlement.

23 Q. Mr. Carpenter, did you believe that there could be a
24 debate about a claim related to the transfer pricing associated
25 with mortgages from the bank to ResCap?

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1 A. I did say that --

2 MR. KERR: Objection, Your Honor.

3 THE COURT: Sustained.

4 Q. Mr. Carpenter, what was your reaction when you read the
5 examiner report?

6 MR. KERR: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q. Mr. Carpenter, did you understand that there was an issue
9 concerning whether Ally took more of a mark-up than it should
10 have under the brokering agreement and the MML PSA?

11 A. That was -- yes. It was an issue that was raised by an
12 employee as he was leaving the company as a possible question.
13 It was looked into by our finance staff. It was looked into by
14 our audit staff. It was looked into independently by Ernst &
15 Young, all of whom concluded the approach that had been taken
16 was, in fact, perfectly legitimate and appropriate.

17 Q. But you still believed that you could have an intelligent
18 conversation about whether that was a valid claim or not,
19 right?

20 A. I believed it was the only thing that you could at least
21 have a conversation about that made any sense.

22 Q. All the other claims you had seen leading up to ResCap's
23 filing and afterwards you consider to be garbage, right?

24 A. Maybe a more polite -- I thought they were grasping for
25 straws, and that's what I thought.

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1 MS. MILLER: Thank you. No further cross.

2 THE COURT: Thank you. Any further examination? Come
3 on up.

4 MR. SCHAFFER: I have a some questions, Your Honor.

5 THE COURT: Sure, please. Come on up.

6 CROSS-EXAMINATION

7 BY MR. SCHAFFER:

8 Q. Mr. Carpenter, I'm Eric Schaffer from Reed Smith. I'm
9 here for Wells Fargo in its capacity as collateral agent.

10 Are you familiar with Wells Fargo's collateral agency
11 agreement that it acted as collateral agent in connection with
12 the AFI revolver?

13 A. No, I'm not.

14 Q. Are you aware that the same collateral that secured the
15 revolver also secured the junior secured notes?

16 A. No, I'm not.

17 Q. Are you familiar at all with Wells Fargo's objection?

18 A. No.

19 Q. You're making this too easy.

20 Are you aware --

21 A. I'm only telling you the truth.

22 Q. Are you aware that from time to time collateral would be
23 released at the direction of Ally?

24 A. I'm not familiar with the details.

25 Q. But generally you're aware that collateral would be

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1 released at Ally's direction?

2 A. I'm going to say no.

3 Q. In your witness statement and in your testimony today,
4 you've advocated for a full release of Ally in connection with
5 the plan, is that correct?

6 A. Correct.

7 Q. And I think you've said one of the reasons you think it's
8 appropriate is that Ally would defeat any claims that might be
9 asserted by the debtors or anyone else against Ally, is that
10 correct?

11 A. I would say it a different way. I would say that from the
12 very first conversation that we had with Warren Buffett when he
13 wanted to buy ResCap way back when, to the negotiation with the
14 board of directors of ResCap, to the mediation by Judge Peck,
15 we've simply said our condition that is totally nonnegotiable,
16 is full releases from everybody. That's all.

17 Q. And would that include any claims that Wells Fargo might
18 have as collateral agent?

19 A. Everybody.

20 Q. Okay. Have you ever given any consideration to any claims
21 Wells Fargo might have?

22 A. No, not separate from all the other claims.

23 Q. Okay. But you are seeking as part of this plan to get a
24 release that would extend to any claims of Wells Fargo?

25 A. All participants.

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1 Q. Would you agree that to the extent Ally directed Wells
2 Fargo as collateral agent to release liens, that the collateral
3 agent should have a right of indemnification against Ally?

4 THE COURT: Sustained.

5 MR. KERR: Objection, Your Honor.

6 Q. Do you know whether Ally has any contractual claims for
7 indemnification against the debtor based on the revolver?

8 A. No.

9 Q. You don't know --

10 A. I mean, I'm sitting here, you're asking me legal
11 questions. I have an honorary doctorate in law, but I haven't
12 started to practice yet.

13 Q. It's not too late.

14 A. I think it probably is.

15 Q. Well, if I tell that you Ally has filed proofs of claim in
16 which it asserts that it has a right -- a contractual right to
17 indemnification against the debtors, would you disagree?

18 A. No, I --

19 MR. KERR: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q. Do you think that any indemnification rights Ally has
22 against the debtors have any value?

23 MR. KERR: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. SCHAFFER: I have nothing further, Your Honor.

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1 THE COURT: Thank you.

2 Any other cross-examination?

3 Any redirect examination?

4 MR. LEBIODA: One question, Your Honor.

5 THE COURT: Is it -- there are a couple people that
6 seem to want to cross. Are you cross examining?

7 MR. LEBIODA: Yeah. Cross-examination, Your Honor.

8 THE COURT: Go ahead. Your name is?

9 MR. LEBIODA: Nathan Lebioda, Winston & Strawn on
10 behalf of Wells Fargo Bank --

11 THE COURT: I apologize.

12 MR. LEBIODA: -- successor to Wachovia Bank.

13 THE COURT: Tell me your -- just tell me your last
14 name again, I'm sorry.

15 MR. LEBIODA: Nathan Lebioda.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 BY MR. LEBIODA:

19 Q. Just two questions, Mr. Carpenter.

20 It's your understanding that Ally is able to currently pay
21 its obligations as they come due in full in cash?

22 A. Yes.

23 Q. And it's also your understanding that Ally is currently
24 solvent?

25 A. Yes.

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1 MR. LEBIODA: Thank you. No further questions.

2 THE COURT: All right. Further cross-examination from
3 anyone? Mr. Rode?

4 THE WITNESS: It better be, because we paid the government
5 six billion dollars. We just paid them six billion dollars --
6 the taxpayer, I should say.

7 THE COURT: Just identify yourself for the record.

8 MR. RODE: My name is Richard Rode, R-O-D-E.

9 CROSS-EXAMINATION

10 BY MR. RODE:

11 Q. Good morning, Mr. Carpenter.

12 One question, as I think the only homeowner left, would it
13 be a problem paying 2.15 to settle mine?

14 THE COURT: 2.15 what?

15 MR. RODE: Billion.

16 UNIDENTIFIED SPEAKER: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. RODE: Just thought I'd ask.

19 THE WITNESS: No harm in asking.

20 THE COURT: Good try.

21 Any other cross-examination?

22 Any redirect examination.

23 UNIDENTIFIED SPEAKER: No, sir.

24 THE COURT: All right. You're excused, Mr. Carpenter.

25 Thank you for your testimony.

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1 THE WITNESS: Thank you very much.

2 (Pause)

3 THE COURT: Is somebody going to tell me what's
4 happening next?

5 MR. O'NEILL: I'm sorry, Your Honor.

6 THE COURT: Mr. O'Neill?

7 MR. O'NEILL: Your Honor, in support of the joint
8 Chapter 11 plan proposed by the debtors and the official
9 committee of unsecured creditors, the debtors offer the
10 testimony John Dubel dated November 12, 2013 which was filed at
11 docket number 5697.

12 If Mr. Dubel was called to testify, he would testify
13 as to what is in his written direct testimony. We would
14 therefore offer his written direct in factual support of the
15 consolidated proceedings.

16 THE COURT: I assume it's being offered -- you said on
17 behalf of the debtor. I assume the committee --

18 MR. O'NEILL: I'm sorry, the committee -- the co-
19 proponents.

20 THE COURT: The co-proponents --

21 MR. O'NEILL: Yes.

22 THE COURT: -- are offering the testimony of Mr.
23 Dubel.

24 All right. I assume there is going to be cross-
25 examination?

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1 MR. COHEN: Yes, Your Honor.

2 THE COURT: Are you offering any exhibits?

3 MR. O'NEILL: Yeah, there will be exhibits. Mr.

4 Wynne's going to offer a second declaration.

5 THE COURT: Okay, Mr. Wynne.

6 MR. WYNNE: Good morning, Your Honor, Richard Wynne of
7 Jones Day on behalf of FGIC.

8 We are offering Mr. Dubel's declaration, which was
9 docket number 5692 as well, and Mr. Dubel would testify --

10 THE COURT: Is this a different declaration?

11 MR. WYNNE: Yes.

12 THE COURT: Okay.

13 MR. WYNNE: There's one with respect to the FGIC
14 claims and then there's the one with respect to the plan.

15 THE COURT: Okay. You have exhibits?

16 MR. WYNNE: We do, Your Honor. I just was informed
17 that there are some objections, although I thought there
18 weren't. Do you want to us deal with that now or after the
19 cross?

20 THE COURT: Why don't you at least identify the
21 exhibits you're offering. And we'll see where we go.

22 MR. WYNNE: We've offered exhibits 719, 720, 721, 722,
23 723, 724, 725, 726, 727, 728, 729 --

24 THE COURT: Hang on just a second -- okay.

25 MR. WYNNE: 730. Then 887, 889, 890, 951, 952 and

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1 953, which I think there may be no objection as long as we're
2 offering them for a limited purpose, but the JSNs counsel will
3 have to speak to that, because I just heard that there might be
4 objections.

5 And we're also offering exhibits 892 and 893, which
6 are effectively compilations of the appellate record from the
7 FGIC 9019 trial.

8 We do believe, Your Honor, that collateral estoppel
9 should apply to your prior ruling, that we put in effectively
10 was admitted in the FGIC trial in those two exhibits.

11 THE COURT: All right. Let's deal with the first
12 thing. Are there objections to the direct testimony of Mr.
13 Dubel, offered in two declaration, the first is 5697 -- any
14 objections to that?

15 MR. PERRY: Dan Perry from Milbank Tweed, Your Honor.
16 I want to reserve on that. I think the answer is no, but given
17 some of the objections on mediation confidentiality, there is
18 at least portions of his declaration that touch on that
19 subject. And so if I'm not going to be allowed to inquire
20 about paragraphs in his declaration, we'd move to strike. But
21 subject to that qualification there is no objection.

22 THE COURT: And what about with respect to the
23 declaration which is 5692 on ECF?

24 MR. PERRY: With the same reservation, Your Honor, no
25 objection.

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1 THE COURT: And tell me what your position is with
2 respect to the exhibits that Mr. Wynne has identified.

3 MR. PERRY: We have no objection subject to the
4 qualification on independent legal significance. We don't --

5 THE COURT: You're going to have to spell that out for
6 me. I don't know what these exhibits are. So --

7 MR. PERRY: Certain of the exhibits, as we understand
8 it, are hearsay exhibits that are being offered subject to an
9 understanding that they're coming in only for their legal
10 significance being transmitted or filed.

11 THE COURT: Is that correct, Mr. Wynne?

12 MR. WYNNE: That's correct, Your Honor.

13 THE COURT: With that limitation, you don't have any
14 objection, I take it?

15 MR. PERRY: Correct, Your Honor.

16 MR. WYNNE: Your Honor, I believe that there are
17 objections to a few exhibits, Exhibit 750, 751, 752 --

18 THE COURT: Hold on, hold on.

19 MR. WYNNE: Oh, sorry.

20 THE COURT: I wrote down every exhibit you identified
21 and now these were not among them.

22 MR. WYNNE: Yes. Your Honor, I had two lists, one was
23 the list that we thought there were no objections, which we
24 covered --

25 THE COURT: Well, let's deal with this list first.

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1 So in light of what Mr. Perry said, Exhibit 719, 720,
2 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 887, 889,
3 890, 951, 952, 953, 892 and 893 are admitted into evidence, as
4 to those appropriate with respect to independent legal
5 significance, not necessarily for the truth of the matters
6 asserted.

7 (Exhibits regarding Mr. Dubel's testimony were hereby received
8 into evidence as Plan Proponents' Exhibits 719, 720, 721, 722,
9 723, 724, 725, 726, 727, 728, 729, 730, 887, 889, 890, 951,
10 952, 953, 892 and 893, as of this date.)

11 THE COURT: So what are the additional exhibits?

12 MR. WYNNE: Exhibit 750.

13 THE COURT: Just give me the numbers, and then
14 we'll --

15 MR. WYNNE: 750, 751, 752, 753 and 754.

16 THE COURT: Mr. Perry?

17 MR. PERRY: We're not going to press any of the
18 objections.

19 THE COURT: I'm sorry? You're not pressing the
20 objections? Okay.

21 MR. PERRY: Correct, Your Honor.

22 THE COURT: All right. So anybody else have any
23 objections?

24 All right. So Exhibit 750, 751, 752, 753 and 754 are
25 also admitted in evidence.

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1 (Exhibits regarding Mr. Dubel's testimony were hereby received
2 into evidence as Plan Proponents' Exhibits 750, 751, 752, 753
3 and 754, as of this date.)

4 MR. PERRY: Thank you, Your Honor.

5 THE COURT: So we have -- I'll permit Mr. Perry to
6 reserve with respect to specific paragraphs of Mr. Dubel's
7 declarations. We'll see, let's make sure before he finishes
8 the witness that his testimony is in, out, whatever.

9 MR. O'NEILL: I have some more exhibits.

10 THE COURT: Okay.

11 MR. O'NEILL: They are 810, 814, 820, 822, 835, 845,
12 852, 853 --

13 THE COURT: Hold on, slow down.

14 MR. O'NEILL: Sorry.

15 THE COURT: Okay, go ahead.

16 MR. O'NEILL: 853, 855 and 857.

17 Of those, all are admitted for a limited purpose,
18 except for 835 and 857, which are admitted for all purposes.

19 THE COURT: Mr. Perry?

20 MR. PERRY: No objection, Your Honor.

21 THE COURT: All right. Exhibits 810, 814, 820, 822,
22 845, 852, 853 and 855 are admitted for a limited purpose, and
23 835 and 857 are admitted for all purposes.

24 (Exhibits regarding Mr. Dubel's testimony were hereby received
25 into evidence as Plan Proponents' Exhibits 810, 814, 820, 822,

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1 845, 852, 853, 855, 835 and 857, as of this date.)

2 THE COURT: Does that deal with all the exhibits?

3 MR. O'NEILL: Yes, Your Honor.

4 THE COURT: All right. Mr. Perry you're going to
5 cross-examine. And I need the witness statement. Here we go.

6 I've got --

7 Yes, the you should be sworn. Thank you, Mr. Dubel.

8 (Witness sworn)

9 THE COURT: All right. Just give me one other second,
10 Mr. Perry. I just want to move some more things out of the
11 way.

12 All right, maybe you've got -- yeah, let's get his
13 cross-examination material in front of him.

14 (Pause)

15 THE COURT: Anytime you're ready, Mr. Perry, is fine.
16 If you're still moving documents around, that's okay.

17 MR. PERRY: We're still distributing documents.

18 THE COURT: That's okay. I'll wait.

19 Mr. Perry?

20 CROSS-EXAMINATION

21 BY MR. PERRY:

22 Q. Good morning, Mr. Dubel.

23 A. Good morning.

24 Q. I'm an attorney for the junior secured noteholders. We've
25 never met, correct?

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1 A. I don't believe we have, no.

2 Q. And you've been deposed roughly twenty or thirty times,
3 correct?

4 A. Not in this case, but in my career.

5 Q. And roughly how many times in your career have you given
6 in-court testimony?

7 A. Maybe ten times or so. I don't recall exactly.

8 Q. You work for Dubel & Associates, right?

9 A. That's correct.

10 Q. And Dubel & Associates provides services to FGIC, correct?

11 A. That's correct.

12 Q. They provide the temporary services of John Dubel, that's
13 you, as CEO of FGIC, correct?

14 A. CEO and chairman of the board.

15 Q. Okay. And you've been providing services to FGIC in
16 various capacities since January of 2008, correct?

17 A. That's correct.

18 Q. And you became CEO of FGIC in December of 2008, correct?

19 A. That's correct.

20 Q. And you have responsibility for overseeing all the
21 operations of FGIC, correct?

22 A. That is correct.

23 Q. And with respect to the ResCap bankruptcy, you served as
24 FGIC's representative on the official committee of unsecured
25 creditors, correct?

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1 A. That is correct.

2 Q. And you have the title of co-chair of the committee,
3 correct?

4 A. Co-chair of the official unsecured creditors' committee,
5 yes.

6 Q. Now, at some point in time certain of the constituencies
7 in this case agreed to a term sheet for a pre-petition plan
8 support agreement, correct?

9 THE COURT: Well, it wasn't during the case, it may
10 have been before the case.

11 Q. With that qualification, prior to the case, certain
12 parties agreed to a pre-petition plan support agreement term
13 sheet, correct?

14 A. That is what I understand.

15 Q. Okay. FGIC was not a party to that pre-petition
16 agreement, right?

17 A. It was not.

18 Q. And at the outset of these cases, the committee did not
19 support the pre-petition plan support agreement, correct?

20 A. Well, at the outset of the cases, the committee didn't
21 have a position, because it needed to understand it and get a
22 better understanding of what the whole pre-petition plan
23 support agreement meant. And so we didn't have is a position
24 at the outset.

25 Q. You didn't support, you didn't oppose, you didn't have a

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1 position at the outset; that's your testimony, right?

2 A. We asked our advisors to review it and report back to us
3 on various issues so we could take a position. But at the
4 outset we had no position until we had the opportunity to
5 review the plan support agreement.

6 Q. Why don't you take a look at DX-BDD in your binder?

7 A. I'm sorry, B, D as in David, D as in David?

8 Q. Yes.

9 THE COURT: You better tell me again.

10 MR. PERRY: BX, D as in Dan, D as in Dan.

11 Q. And if you could flip to the second page, this, just for
12 the record this is an e-mail from Mr. Renzi -- you understand
13 Mr. Renzi is someone employed by the FTI firm, correct?

14 A. I do understand that.

15 Q. And the FTI firm provides financial advisory services to
16 the debtors, correct?

17 A. That's my understanding, yes.

18 Q. And if you flip to the second page, this is a letter on
19 the Aurelius firm's letterhead. You understand that the
20 Aurelius firm is one of the junior secured noteholders, sir?

21 A. I understand that to be the case.

22 THE COURT: You know, maybe I'm not understanding you
23 clearly which exhibit, because I'm not finding it. Tell me one
24 more time, okay?

25 MR. PERRY: DX-BDD, Boy, David, David. It should be

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1 the third exhibit in your binder, Your Honor. And it's a
2 covering e-mail. May I approach?

3 THE COURT: BDB? Is this it? Okay. Thank you very
4 much. I have BDD in front of me now. Thank you for your help,
5 Mr. Perry.

6 Q. We were focused on the letter from Aurelius to the ad hoc
7 group which is the second page of DX-BDD.

8 My question to you, sir, is have you ever seen that letter
9 before?

10 A. I heard reference to in the earlier testimony, I think, of
11 Mr. Marano, but I've never seen this -- never seen this letter
12 before.

13 Q. Okay. Now in July of 2012, the debtors filed schedules of
14 assets and liabilities on behalf of the individual debtors,
15 correct?

16 A. I'm sorry, what date was that?

17 Q. I said in July of 2012 -- in June or July of 2012, the
18 debtors filed schedules of assets and liabilities on behalf of
19 the individual debtors in the ResCap bankruptcy, correct.

20 A. It's my understanding they were done at the very end of
21 June of 2012.

22 Q. And why don't you take a look at DX-AUT --

23 A. Okay, you have to help me --

24 Q. -- which should be the next exhibit --

25 A. Oh, got it.

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1 Q. -- in your binder after the Aurelius letter we were just
2 looking at.

3 A. Thank you.

4 Q. And I'm specifically interested in the text on page 5.
5 It's a paragraph labeled "intercompany transactions".

6 My question, sir, is did the committee focus on the
7 debtors' treatment of intercompany claims in their schedules of
8 assets and liabilities in or around the time those schedules
9 were filed?

10 A. I'm sorry, are you asking me to read that paragraph or
11 just --

12 Q. I'm just asking you -- so my question is -- take the
13 paragraph out -- did the committee focus on the treatment of
14 intercompany claims in the schedules of assets and liabilities
15 in or around June or July of 2012 when they were filed?

16 A. I don't believe it was in or around June or July. The
17 committee had a tremendous amount of work in front of it,
18 including dealing with the sales of the major assets of the
19 company and reviewing DIP motions and the likes of such. But
20 sometime in the fall or late summer, the committee would have
21 focused on the various different claims that were being
22 asserted against the debtors by all the various parties,
23 including what might have been included in the document here.

24 Q. Sure. Why don't you take a look at DX-AYQ. And I'm
25 specifically interested in the second page.

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1 Mr. Eckstein is your lawyer from Kramer Levin, correct, or
2 the committee's lawyer from Kramer Levin, correct?

3 A. That's correct.

4 Q. Okay. And he's writing in this e-mail to Mr. Lee -- you
5 understand Mr. Lee to be the lawyer for the debtors, correct?

6 A. I do, yes.

7 Q. And about halfway down, let me just read, Mr. Eckstein
8 writes to Mr. Lee, "The plan annexed to the exclusivity motion
9 appears to separately classify intercompany claims and says
10 they will be allowed as general unsecured claims in the case.
11 This is at odds with the company's position" --

12 THE COURT: It says "that is at odds".

13 MR. PERRY: What's that?

14 THE COURT: You just misread it. It's "that is at
15 odds".

16 MR. PERRY: That is -- thank you, Your Honor.

17 Q. -- "that is at odds with the company's position that
18 intercompany claims were not being recognized and would not be
19 allowed. You and our waterfall analysis" --

20 THE COURT: It's "your and our waterfall analysis".

21 Q. -- "your and our waterfall analysis reflects this
22 assumption. This is potentially a major issue."

23 Is it fair to say that by early September 2012, the
24 committee had identified the treatment of intercompany claims
25 as potentially a major issue in the ResCap case?

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1 A. One of the many issues that the committee was looking at
2 was all of the various claims, including intercompany claims.

3 Q. And part of the reason that the committee was looking into
4 intercompany claims was because there was a recognition on the
5 part of the committee that if the JSNs had a lien on
6 intercompany claims, it could render the JSNs oversecured,
7 right?

8 MR. O'NEILL: Objection, Your Honor.

9 THE COURT: Overruled. If that's your recollection.

10 A. I'm sorry, could you repeat the question?

11 Q. Isn't it the case, sir, that there was a recognition on
12 the part of the committee that if the JSNs had a lien on the
13 intercompany claims, those claims could render the JSNs --
14 recognition of those claims could render the JSNs over secured?

15 A. Well, I think at that point in time, what we were trying
16 to focus on is all of the various different claims that could
17 be presented to the estates which would have an impact on
18 trying to negotiate a global plan of reorganization, because by
19 that point in time it was clear that there was not a lot of
20 support for the plan that was being proposed.

21 So we needed to understand the impact of intercompany
22 balances as it interrelated with all of the other various
23 claims that were being presented against the estates.

24 Q. And part of the reason that the committee needed to
25 understand the interrelation of the intercompany claims was a

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1 recognition on the committee's part that if the intercompany
2 claims were recognized and the JSNs had a lien on intercompany
3 claims, it could render them oversecured, right?

4 A. At this time I don't recall that to be something that we
5 were focused on. We were focused on trying to understand all
6 of the issues around these intercompany balances and other
7 claims that were being presented.

8 Q. Okay. And -- but there did come a time where the
9 committee focused on the possibility that if the JSNs had a
10 lien on intercompany claims, a recognition of the claims could
11 render them oversecured, right?

12 A. I think there came a time when as we were reviewing the
13 security agreements, because there was a time frame in which we
14 had to -- the committee had to raise objections to the security
15 agreements, the collateral and the likes, that counsel did
16 start to look at the issues of intercompany liens or
17 intercompany balances and whether there were liens or not.

18 Q. And going into -- you understand there was a mediation
19 with Judge Peck that started in late December of 2012, correct?

20 A. That's correct.

21 Q. And isn't it true, sir, that going into that mediation,
22 the committee had at least recognized the possibility that if
23 the JSNs had a lien on intercompany claims, the recognition of
24 those claims could render the JSNs oversecured?

25 A. No, that was not our understanding.

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1 Q. Let's take a look at DX-ANH.

2 MR. KERR: Your Honor --

3 THE COURT: Mr. Kerr?

4 MR. KERR: I have an objection to the use of this
5 exhibit. This exhibit is 408 material.

6 THE COURT: You're going to have to go over to the
7 microphone. I'm sorry. I just want to make sure we have a
8 clear record.

9 MR. KERR: Your Honor, Charles Kerr from Morrison &
10 Foerster. We have an objection to the use of this exhibit,
11 even though it's not in evidence, it's 408 material --

12 THE COURT: It's what?

13 MR. KERR: It's material prepared for purposes of
14 settlement under Federal Rules of Evidence 408. The cover's an
15 e-mail, I believe from Mr. Renzi, but attached to it was a
16 document that was prepared for settlement purposes.

17 THE COURT: Mr. Perry, you want to respond to that?

18 MR. PERRY: Sure. Two things, Your Honor. First, Mr.
19 Lee referenced this exhibit in his opening. I believe he
20 referred to it as one of the preliminary documents that was
21 prepared. So that's one.

22 THE COURT: Do you have a transcript to show me, to
23 read to me where he did that.

24 MR. PERRY: I can certainly take it out. I don't have
25 it.

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1 THE COURT: You're going to have to find it.
2 Otherwise I'm not going to let you use it. It clearly says for
3 settlement discussion purposes only.

4 MR. PERRY: Let me -- just a second, Your Honor. The
5 second point.

6 THE COURT: Yes.

7 MR. PERRY: We have, I believe, preserved an
8 objection -- 408 applies to settlement discussions between
9 potential claimants, and this is a discussion about the
10 intercompany claims. The settlement of those claims are
11 literally interdebtor, intercompany claimant to intercompany
12 claimant.

13 This is not discussing a settlement with the
14 committee, it's literally discussing a settlement between one
15 of Morrison & Foerster's clients another of Morrison &
16 Foerster's clients.

17 So we would take the position that 408 does not apply
18 to a communication with the committee about a potential
19 resolution of interdebtor claims.

20 THE COURT: Mr. Kerr?

21 MR. KERR: If I may, Your Honor. Charles Kerr. The
22 exhibit that Mr. Perry showed the witness just previously to
23 this includes within -- that's Exhibit DX-AYQ -- there is an e-
24 mail on the second page of that exhibit from Mr. Eckstein to
25 Mr. Lee, which I think Mr. Perry read, about Mr. Eckstein

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1 raising a question about the treatment of intercompany balances
2 in light of the fact that there had been an exclusivity motion,
3 I think, prepared and filed in August, several weeks before.
4 And attached to that, I believe, and I understand, there was a
5 copy of a proposed plan.

6 And this communication, which is DX-ANH, was in
7 connection with trying to resolve those issues with the
8 committee.

9 So Mr. Perry is incorrect in my -- I suggest Mr. Perry
10 is incorrect. This was being part of the settlement
11 discussions with the committee over a potential plan at that
12 point in time. We were passing information back on that basis.

13 THE COURT: Okay. Do you have a reference to the
14 opening statement, Mr. Perry? Because I sure don't remember
15 it.

16 MR. PERRY: So it -- I'm being told -- we're doing
17 this on the fly --

18 THE COURT: Well, we have a transcript. So it's not
19 on the fly. I'm not asking the impossible here.

20 MR. PERRY: Okay. So it's page 84 --

21 THE COURT: Half your crew has computers -- go ahead.

22 MR. PERRY: Page 84 of the rough draft that was
23 circulated by the reporting agency last night, Mr. Lee
24 commented, "Your Honor, there was a very preliminary draft
25 analysis that was put together prior to the bankruptcy petition

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1 in which we were meandering through the intercompany balances."

2 And he goes on. That's a reference to this document.

3 THE COURT: I don't know whether it was or not.

4 Objection sustained.

5 BY MR. PERRY:

6 Q. Mr. Dubel, the committee retained AlixPartners as one of
7 its financial advisors, correct?

8 A. That's correct.

9 Q. And one of the tasks of the AlixPartners firm was to audit
10 and review the intercompany claims, correct?

11 A. No, that's not correct.

12 Q. One of the tasks of the AlixPartners firm was to review
13 the debtors' intercompany claims, correct?

14 A. AlixPartners was working under the direction of the
15 committee counsel to assist the committee counsel in its review
16 of a myriad of different claims. I believe that reviewing the
17 intercompany balances was one of the things that the committee
18 counsel had directed and asked them to assist counsel on.

19 Q. And AlixPartners commenced that review as early as
20 September of 2012, correct?

21 A. I don't remember the exact time frame.

22 Q. Okay. Well, if -- let me just ask the question.

23 MR. PERRY: I wasn't clear, Your Honor, whether the
24 full Exhibit DX-ANH, whether the objection was sustained.

25 THE COURT: Sustained.

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1 MR. PERRY; Okay.

2 Q. AS to the --

3 THE COURT: I'll deal with questions one at a time.

4 You want to ask another question?

5 Q. So directing your attention back to DX-ANH I just want to
6 ask you about --

7 THE COURT: No, you're not going to do that. I've
8 sustained the objection with regard to ANH. You may not refer
9 to ANH. It was for settlement purposes. The objection is
10 sustained.

11 Q. Why don't you look at DX-BDB?

12 A. B as in boy, D as in David, B as in boy?

13 Q. D as as in Dan, B as in Boy, D as in David.

14 A. DBD, okay sorry.

15 I'm sorry, could you repeat that again. I don't see a
16 DBD.

17 Q. It should be the next exhibit --

18 THE COURT: B as in boy, D as in David, B as in Boy?

19 MR. PERRY: Yeah.

20 THE COURT: BDB?

21 THE WITNESS: Okay, I'm sorry, I thought he said the
22 opposite.

23 THE COURT: Yeah, I'm having trouble too, but I think,
24 BDB? The next one?

25 MR. PERRY: Yes, BDB.

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1 THE COURT: Got it. Mr. Dubel, you've got it.

2 THE WITNESS: I'm all set.

3 THE COURT: I've got it. Go ahead.

4 THE WITNESS: Thank you.

5 MR. KERR: Your Honor.

6 THE COURT: Mr. Kerr?

7 MR. KERR: Again, there is at least a portion of this
8 document, starting I think on the --

9 THE COURT: You're going to have to go to the
10 microphone.

11 MR. KERR: I apologize, Your Honor.

12 THE COURT: This isn't just privileged, this is highly
13 privileged and confidential.

14 MR. KERR: And it's really important.

15 Your Honor, again, attached to Exhibit DX-BDB, there
16 is a document, it looks like slides, that are marked subject to
17 408, and I'd make the same objection. And I believe the entire
18 attachment is marked subject to 408. And I think it's the
19 same --

20 THE COURT: Lots of stuff gets marked. But --

21 MR. KERR: But this, Your Honor, this again, I
22 believe, is part of those discussions.

23 THE COURT: Well, here is what you're going to have to
24 do. If you want to take the witness on voir dire to establish
25 those facts that this was part of a settlement discussion, I'm

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1 going to permit to you do that. I want to make sure I have a
2 sufficient evidentiary record on which to sustain or overrule
3 the objection.

4 Do you wish to take the witness -- first of all, has
5 he seen it before?

6 Have you seen this exhibit before, Mr. Dubel?

7 THE WITNESS: No, Your Honor.

8 THE COURT: Okay. All right. Represent to the
9 Court -- since he hasn't seen it, he can't lay a foundation for
10 it, Mr. Perry.

11 Okay. So the objection is sustained. I'm not going
12 to permit this witness to be examined on a document that has
13 not -- where no foundation has been laid.

14 The legend beginning on the second --

15 MR. KERR: I think it's Bates number --

16 THE COURT: It's got a long Bates number. 577 are the
17 last digits of the Bates stamp, I think.

18 I'm going to sustain the objection for now. If there
19 is a witness that can authenticate it and establishes whether
20 there's privilege or not, I'm just not going to permit this
21 witness who has never seen the document to be examined with a
22 witness that at least on the face of it appears to relate to
23 the same subject matter as the prior exhibit and is legended --
24 clearly legend subject to FRE 408 with highly privileged and
25 confidential.

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1 MR. KERR: Your Honor, and that's fine. I just want
2 to be -- just to be very clear for Your Honor, I was raising
3 the 408 issue, not the privilege issue. But I take that and I
4 will --

5 THE COURT: Yes, 408. It was exchanged between --

6 MR. KERR: Correct, Your Honor.

7 THE COURT: -- between parties. And your
8 representation was it was for settlement purposes.

9 MR. KERR: But I will confirm that, Your Honor. If it
10 comes up again and if that's the case, I will object at that
11 time. If not, I'll let it go.

12 THE COURT: Okay. All right.

13 MR. KERR: Thank you.

14 THE COURT: Confer with Mr. Perry and make sure -- he
15 may disagree, but at least he knows what your position is on
16 it.

17 So for now I'm sustaining the objection to the use of
18 Exhibit D as in David -- no, excuse me -- B as in boy, D as in
19 David, B as in boy.

20 BY MR. PERRY:

21 Q. As of November of 2012, there was no formal mediation
22 process that the committee was engaged in, correct?

23 A. That's correct.

24 Q. And the committee's professionals at Moelis would from
25 time to time run sensitivity scenarios based on various

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1 potential outcomes in the case that calibrated the unsecureds'
2 recovery, correct?

3 A. At the direction of the committee, we asked committee
4 counsel to work with Moelis and AlixPartners to develop the
5 various different analyses. So Moelis might have present --
6 would have presented various information along with committee
7 counsel.

8 Q. And at least focusing on the Moelis analysis, one of the
9 sensitivities that they ran prior to the commencement of the
10 mediation was whether the intercompany balances were recognized
11 or not, correct?

12 A. Committee counsel and its advisors presented a tremendous
13 amount of information to the committee. I don't recall the
14 specifics of each individual presentation at this time. We
15 were meeting with counsel weekly on a variety of different
16 issues.

17 Q. Okay. I understand you don't recall the specifics. My
18 question relates precisely to the issue of intercompanies and
19 whether the committee was presented with a sensitivity analysis
20 of the intercompany claims issue prior to the commencement of
21 the mediation.

22 A. Intercompany sensitivity, is that what you're asking me?

23 Q. A sensitivity that compared the committee's recoveries
24 either with the intercompany balances recognized and not
25 recognized?

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1 A. I don't recall if there was one presented or not. I just
2 don't recall as I sit here right now.

3 (Pause)

4 Q. Well, why don't you go to page -- do you have your direct
5 examination? Up there was a --

6 A. I do not -- don't know if it's in this binder or not.

7 Q. I think we did put it in --

8 THE COURT: It is. There is a tab 5692, direct
9 testimony.

10 MR. PERRY: There is actually two tabs, Your Honor.
11 I'm going to refer to 5697.

12 THE COURT: Okay, it's in there too.

13 A. 5692?

14 Q. 97.

15 THE COURT: No, 97. It's the second of your --

16 THE WITNESS: Yes, thank you. I see it.

17 THE COURT: Okay.

18 Q. And if you could go to page 14 of your direct?

19 Let's go back; why don't we start with page 12 and
20 paragraph 28.

21 It's fair to say, is it not, sir, that in the fall of 2012
22 the committee began to focus in earnest on strategies that
23 might avoid prolonged conflict and destructive litigation,
24 correct?

25 A. That's correct.

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1 Q. And one of the things the committee did was analyze
2 creditor claims, correct?

3 A. One of the many things, yes.

4 Q. And paragraph 31 identifies the various types of creditor
5 claims that the committee considered, correct?

6 A. Yeah, that's correct.

7 Q. And one of the types of creditor claims that the committee
8 considered were the intercompany balances, correct?

9 A. Well, I would classify them as intercompany balances, not
10 necessarily creditor claims.

11 Q. Okay. Well, you'd agree with me that you include the
12 bullet labeled intercompany balances in paragraph 31, which
13 starts with the text "The committee's consideration of creditor
14 claims included the following, among others," that's what your
15 declaration says, correct?

16 A. That's correct.

17 Q. And the review of intercompany balances was something that
18 was commenced in the fall of 2012, right?

19 A. In the fall of 2012 or possibly a little bit earlier, in
20 the late summer. I don't recall exactly when it commenced.

21 Q. And at least with respect to intercompany balances, the
22 committee considered whether they were enforceable,
23 subordinated, subject to set-off, or subject to
24 recharacterization, correct?

25 A. That's correct.

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1 Q. And if you go down to paragraph 32, there's -- the third
2 sentence reads: "Furthermore, late in 2012, committee members
3 began to hold discussions among themselves concerning these
4 matters."

5 Do you see that?

6 A. I do.

7 Q. And it's true, is it not, that late in 2012, committee
8 members began to hold discussions among themselves about the
9 intercompany balances, correct?

10 A. That sentence is referring to all of the various different
11 items that were laid out in paragraph 31. We would have had
12 discussions at committee meetings concerning all of the various
13 different claims, including reports from counsel on their
14 review of the intercompany balances.

15 Q. And that analysis occurred in late 2012, correct?

16 A. Well, the analysis commenced when we asked the committee
17 advisors to start the review of all of these various different
18 claims, which would have been for a lot of these claims we
19 started looking at them in the summer and would have gone
20 through the latter part of 2012 and continued on through 2013,
21 midpoint in 2013.

22 Q. Sure. But at least by the time of the commencement of the
23 mediation before Judge Peck, the committee had commenced its
24 evaluation of the intercompany balances, correct?

25 A. That's correct.

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1 Q. And by the time that the mediation before Judge Peck was
2 commenced, the committee understood, did it not, that treating
3 intercompany claims as enforceable had the potential to render
4 the JSNs oversecured?

5 A. No, I don't believe that's correct.

6 Q. Once you accounted -- the committee accounted for an
7 influx of funds from a prospective Ally settlement agreement,
8 the committee recognized the possibility, prior to mediating
9 with Judge Peck, that there was the potential that the
10 intercompany claims, to the extent they were enforceable, would
11 render the JSNs oversecured, isn't that right?

12 A. I don't believe that's correct.

13 Q. Now you had two roles in the mediation, right?

14 THE COURT: You want to spell it out?

15 Q. One was as a member of the creditors' committee and the
16 other was as FGIC's representative in the mediation sessions,
17 right?

18 A. That's correct, yes.

19 Q. And there were a hundred or so people involved in the
20 mediation process by your observation, right?

21 A. Yes, there were a hundred and -- I want to say 150 round
22 number -- 150 people involved in the mediation process.

23 Q. And by your observation, there were ten to fifteen major
24 creditor groups involved, right?

25 A. I believe that's correct, yes.

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1 Q. And from your perspective all of the major creditor
2 constituencies participated in the mediation, right?

3 A. Yes, that's correct.

4 Q. Ally participated in the mediation, right?

5 A. Ally Financial, yes.

6 Q. The debtors participated in the mediation, right?

7 A. Yes, they did.

8 Q. The monolines participate understand the mediation,
9 correct?

10 A. Two of the monolines, FGIC and MBIA who held the most
11 significant claims.

12 Q. Okay. And MBIA had actually commenced litigation against
13 certain of the debtors, right?

14 THE COURT: Pre-petition you're talking about?

15 MR. PERRY: Pre-petition.

16 A. Yes, I believe that's correct.

17 Q. And do you know which debtors MBIA had sued?

18 A. I've never seen their lawsuits. I know they were going on
19 for four years or so.

20 Q. Do you know one way or another whether they had sued
21 ResCap as opposed to RFC or GMACM?

22 A. I believe they were suing multiple debtors, including
23 ResCap, but I don't recall -- you know, I don't know the
24 lawsuit.

25 Q. Now the borrower claimants, certain of the borrower

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1 claimants participated in the mediation, right?

2 A. Yes, representatives of the borrowers' claimants, yes.

3 Q. And the private securitization claimants participated in
4 the mediation, right?

5 A. Several of them directly and their counsel.

6 Q. Okay. The New Jersey Carpenters Union participated in the
7 mediation, right?

8 A. I believe it was counsel. I'm not sure if there was
9 actual representatives, but counsel who had authority to act on
10 their behalf, from what was represented to us.

11 Q. And the senior unsecured noteholders participated in the
12 mediation, correct?

13 A. Certain holders of the senior unsecured notes, plus the
14 trustee for the senior unsecured notes participated, yes.

15 Q. And the junior secured noteholders participated in the
16 mediation, correct?

17 A. As I understand, certain representatives of the -- of
18 various junior secured noteholders did participate in the
19 mediation sessions.

20 Q. That would include representatives on behalf of Berkshire
21 Hathaway, right?

22 A. I believe it was just one representative on behalf of
23 Berkshire Hathaway.

24 Q. And representatives on behalf of the ad hoc group of
25 junior secured noteholders, correct?

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1 A. That's correct.

2 Q. And with respect to those representatives, they were
3 involved in many of the global sessions that you participated
4 in, correct?

5 A. That's correct.

6 Q. And you don't recall any point in time in which the JSNs'
7 representatives were excluded from the mediation, process,
8 correct?

9 A. I don't recall any time that they were excluded.

10 Q. And from your perspective as co-chair of the committee,
11 they attended and participated in the mediation process,
12 correct?

13 A. Representatives of them; not actual principals.

14 Q. And when you say representatives, that's folks from
15 Milbank Tweed, right?

16 A. That's correct.

17 Q. Folks from White & Case, right?

18 A. That's correct.

19 Q. Folks from the Houlihan Lokey firm, correct?

20 A. That's correct.

21 Q. And with respect to the representative from Berkshire, you
22 understood that he had settlement authority at the mediation,
23 is that right?

24 A. I had no understanding of what authority he may or may not
25 have had.

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1 Q. Okay. Now you understand that in this proceeding the JSNs
2 contend that they have liens on certain inter-company balances
3 among the debtors, correct?

4 A. When you say "this proceeding", are you talking about the
5 ResCap bankruptcy proceeding?

6 Q. The ResCap bankruptcy proceeding, the plan confirmation
7 proceeding, and phase 2 trial that we're all here on?

8 A. I understand that they have alleged liens on intercompany
9 balances.

10 Q. And with respect to -- you also understand that the JSNs
11 contend that they have liens on breach of contract claims that
12 the debtors might have against Ally, right?

13 A. I understand that they have alleged they have liens on
14 those issues.

15 Q. And your testimony -- well, and it's true that you've
16 never had discussions with any representatives from the JSNs
17 about the extent and nature of their liens outside the context
18 of a mediation, correct?

19 A. I don't believe I've had any conversations with any
20 representatives of the JSNs outside of the mediation sessions.

21 Q. Why don't you go to DX-AZW? A as in Allen, Z as in Zorro,
22 W as in Wendy.

23 A. Yes, I see it.

24 Q. Mr. Eckstein was authorized on behalf of the committee to
25 negotiate confidentiality agreements with participants in the

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1 mediation, correct?

2 A. Well, the committee wanted to have as many principals
3 sitting at the mediation table as possible. We had a
4 tremendous number of principals: principals from MBIA,
5 principals from FGIC, AIG, Allstate. We had actual principals
6 from hedge funds such as Paulson sitting at the table. And we
7 wanted to have principals negotiating this so that all the
8 parties could get together and come to an agreement. So we
9 sought to have as many participants as possible at the
10 principal level participate.

11 Q. Sure. And you understand that Mr. Groper is somebody
12 associated with the Aurelius fund, correct?

13 A. I do.

14 Q. And he is one of the principals that you as co-chair of
15 the committee wanted to have at the mediation, correct?

16 A. One of the principals, one of many principals we would
17 have loved to have had.

18 Q. And you would agree with me that this appears to be an
19 e-mail at least where Mr. Eckstein is responding to Mr. Groper
20 in connection with a request concerning Aurelius' participation
21 in the mediation, correct?

22 A. Well, I believe this is the same document that was given
23 to me -- was this the same document that was given to me at my
24 deposition?

25 Q. Yes, I believe so.

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1 A. I have not seen this document before. I don't -- I'm not
2 sure this was a document that was given to me at my deposition,
3 but if it was, I testified I had not seen this document before.

4 Q. Okay. Well, just referring your attention to the third
5 page of the document, there is an order in aid of settlement
6 discussions entered in the Vitro case.

7 You understand that -- is it your understanding that
8 members of the JSN group were seeking an order that would allow
9 them to participate in the mediation as early as December 20th,
10 2012?

11 A. I don't recall the date. I do know that after the
12 mediation order was entered, I think it was December 26th of
13 2012, there were any number of parties who were willing to
14 abide by the mediation order. It's my understanding that
15 Aurelius chose not to abide by the mediation order and was
16 seeking to have a modification of it.

17 Q. And ultimately the committee agreed to a modification of
18 the mediation order to permit the Aurelius firm, among others,
19 to participate, right?

20 A. We did.

21 Q. And you don't know why that modification didn't occur in
22 late December or early January of 2013, correct?

23 A. Well, as I just stated, I believe that the mediation order
24 was entered in December, on December 26th of 2012. So it
25 really probably would have been in January that we would have

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1 had, you know, the initial discussions that I recall about, you
2 know, enabling other parties to participate, but not have to
3 abide by the mediation order. Because most of the other
4 parties, almost all the other parties were willing to abide by
5 the mediation order.

6 Q. Why don't you take a look at DX-AZY. This is an e-mail
7 from Mr. -- e-mail chain from Mr. Groper to Mr. Eckstein
8 beginning on January 8, 2013. He sends follow-ups on January
9 11th and January 15th.

10 My question to you, sir, is are you aware of any response
11 from Mr. Eckstein to Mr. Groper's e-mails set forth at DX-AZY?

12 A. I have never seen this e-mail before.

13 THE COURT: Mr. Perry, my patience is running out.

14 MR. PERRY: I'll move on then, Your Honor.

15 THE COURT: I didn't do this as a timed trial, but I
16 may.

17 Q. Now in terms of -- you understand that the debtors had
18 asserted as part of --

19 MR. PERRY: Strike that.

20 Q. You understand that the debtors have potential claims
21 against Ally in this bankruptcy case, correct?

22 A. Yes, the debtors have claims -- the estate, I should say,
23 has claims against Ally that have all been, you know, settled
24 as part of the global resolution.

25 Q. And focusing on the claims that the debtors have against

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1 Ally, going into the mediation, the committee attempted to
2 understand the value of those various claims, correct?

3 A. Well, prior to any thought of even a mediation, really in
4 the early summer, probably late May time frame, shortly after
5 the committee was formed, while there was a lot of things that
6 the committee had on its plate, including looking at the sale
7 process and the likes and such, the committee recognized that
8 because the debtor had entered into a plan support agreement in
9 which they were releasing all of those claims and all of the
10 nonconsensual third-party releases, that the committee felt it
11 was appropriate to have counsel commence an investigation of
12 the various different claims that the estate might have against
13 Ally. And that commenced in the summer, including with a
14 request for 2004 examinations.

15 Q. And the committee did that so that it could work through
16 the mediation process and come up with a fair allocation of all
17 the funds and value that would be available to all of the
18 creditors as a result of any potential settlement, right?

19 A. That's not correct.

20 Q. Why don't you -- Mr. Dubel, you recall you gave a
21 deposition in this case, correct?

22 A. I've given a couple of depositions, yes.

23 Q. Do you recall you gave a deposition on Thursday, November
24 7th; Mr. Sedrish asked you questions. Do you recall that?

25 A. I don't recall the exact date, but if you have the

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1 transcript, I'm sure I can --

2 THE COURT: There is a transcript in the binder from
3 November 1st. Is that the one you're talking about?. It just
4 says -- the tab says deposition transcript. There is another
5 transcript behind it. It's near the back of the binder. Is
6 that the one you're talking about?

7 THE WITNESS: I don't believe that's my deposition.

8 THE COURT: Oh, you're right. It's not. It's
9 somebody else's deposition.

10 Thank you. All right. I've been handed a copy of the
11 deposition transcript of Mr. Dubel from Thursday, November 7th,
12 2013.

13 Q. Mr. Dubel, directing your attention to page 37, line 3 to
14 37, line 15, I'd like to play a clip of the question and answer
15 that is --

16 A. I'm sorry? Could

17 Q. Page 37 --

18 A. Yes.

19 Q. -- line 3 to page -- to line 15, clip 19.

20 MR. ECKSTEIN: Your Honor, is he trying to impeach
21 with this? This doesn't relate to the question he just asked.

22 THE COURT: Let me just look at it first.

23 Sustained.

24 Q. Isn't it true, sir, that prior to the mediation, the
25 committee attempted to understand what the values of various

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1 claims were prior to the mediation so that it could work
2 through the mediation process, and prior to that work through
3 the process of coming up with a fair allocation of all the
4 funds and value that would be available to all of the various
5 different creditors?

6 A. I'm sorry, could you repeat it? I just want to make sure
7 I answer the question properly. Could you repeat the question?

8 Q. Isn't it true, sir, that the committee attempted to
9 understand what the values of the various claims were prior to
10 the mediation so that it could work through the mediation
11 process, and prior to that, work through the process of coming
12 up with a fair allocation of all the funds and value that would
13 be available to all of the various different creditors?

14 MR. ECKSTEIN: Objection.

15 THE COURT: Overruled.

16 A. I'm trying to understand -- I'm trying to answer your
17 question properly.

18 THE COURT: Mr. Dubel, look at page 37 of your
19 transcript. Let's just do it the easy way, okay.

20 Look at page 37.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Your answer at lines 8 through 15, Mr.
23 Perry essentially asked you a question reading almost verbatim,
24 and he wants to know if that is accurate, okay?

25 THE WITNESS: I understand, Your Honor. I think that

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1 response was in relation to a question that I -- as I
2 understood the question, was more developed around the
3 mediation process.

4 We absolutely reviewed all of the various claims, as I
5 said earlier, that started in the summer of 2012, because we
6 wanted to understand what the magnitude of the claims that
7 could be presented to the debtors' estates -- I'm sorry, by the
8 estates against Ally.

9 THE COURT: Did you also want to come up with what you
10 thought was a fair allocation of all the funds and value that
11 would be available to all of the various different creditors?
12 That's what the sentence in the deposition --

13 THE WITNESS: We wanted to see if we could determine
14 that. We were looking at the variety of different claims --
15 and when I say values here, what I'm referring to is really the
16 fact that it could be zero to any number, and that's what we
17 were trying to understand, what could be the magnitude of the
18 claims that we could present to them.

19 THE COURT: Go ahead Mr. Perry with your examination.
20 I'm not precluding you from going over this again. You can ask
21 your next question.

22 MR. PERRY: Okay.

23 BY MR. PERRY:

24 Q. Well, let me do it this way: At your deposition were you
25 asked the following question and did you give the following

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1 answer? Question --

2 THE COURT: Just, you could read it to yourself. You
3 were asked the question: did you give the answer that's on page
4 37, lines 3 through 19?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Okay. He's answered that. Let's move
7 along.

8 Q. You would agree --

9 MR. PERRY: What's that?

10 THE COURT: Let's move along.

11 Q. You would agree with me that in attempting to negotiate
12 with Ally, it would be helpful to know the value of the
13 potential claims the ResCap debtors had against Ally, right?

14 A. We wanted to understand the magnitude of the claim so we
15 could present a case to -- and I don't mean a legal case, but
16 just a presentation to Ally on what the magnitude of those
17 claims would be to get what I'll call the best leverage against
18 Ally in trying to negotiate a settlement with them.

19 Q. Sure. And that was work that was done in advance of the
20 mediation, correct?

21 A. As I've testified earlier, we commenced that in the
22 summer, well before there was even a thought of mediation.

23 Q. Now, you were here for Mr. Eckstein's opening statement
24 yesterday, correct?

25 A. I was.

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1 Q. And you heard Mr. Eckstein talk about how the committee
2 had not focused on the breach of contract claims identified in
3 the examiner report, correct?

4 A. I don't recall exactly. I was in the back, unfortunately
5 busy on other work at the same time. I have a company to run.

6 THE COURT: It was a wonderful opening, I assure you.

7 THE WITNESS: And no offense to Mr. Eckstein, please.

8 THE COURT: Do you want to know whether he listened to
9 Mr. Uzzi's opening as well, or Mr. Cohen's?

10 Q. So let me ask it this way. The committee at a certain
11 point in time in these cases filed an STN motion seeking leave
12 to pursue claims against Ally on behalf of the debtors, right?

13 A. That's correct.

14 Q. And is it your understanding that the committee sought
15 leave to pursue breach of contract claims against the
16 debtors -- against Ally on behalf of the debtors?

17 A. The committee wanted to bring -- sought the opportunity to
18 bring any and all claims that could be presented against Ally.

19 Q. And that would include breach of contract claims, I take
20 it, correct?

21 A. It would include any and all claims that could be
22 generated and presented.

23 Q. And just so we're clear, if the debtors had breach of
24 contract claims against Ally that could generate value for the
25 general unsecured claims, your view is that those claims ought

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1 to be brought, right?

2 A. If there were valid claims of any type, whether they were
3 breach of contract claims or otherwise, we would have wanted to
4 present them to Ally either in a negotiation or in a litigation
5 if it came to that to try and create the best value for the
6 estate.

7 Q. Okay. And at least with respect to --

8 MR. PERRY: Well, strike that.

9 Q. The examiner completed his report prior to the conclusion
10 of the mediation with Ally, correct?

11 THE COURT: No.

12 MR. ECKSTEIN: Objection.

13 THE COURT: Sustained. Do you have some foundation
14 for that?

15 BY MR. PERRY:

16 Q. Well, let me ask you this: Do you have any understanding
17 of whether the parties sought to delay publication of the
18 examiner -- release of the examiner report prior to the
19 conclusion of the mediation?

20 A. There were many things that we sought to delay as part of
21 the mediation, because we didn't want to have any number of
22 issues that were popping up kind of get in the way of what was
23 starting to coalesce around a successful mediation process.

24 We had, as I recall, the STN motion had been presented --
25 I don't think Your Honor had ruled on it -- we had that. We

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1 had sought to delay the RMBS trial. And yes, we had sought to
2 delay the publication of the examiner's report, to the extent
3 that it was even finished by that. I don't remember exactly
4 when they were going to be finished.

5 THE COURT: How much longer are you going to be on
6 your cross-examination?

7 MR. PERRY: Twenty or thirty minutes?

8 THE COURT: Keep going.

9 Q. Now ultimately the committee adopted what you described as
10 a holistic approach to settlement, right?

11 A. The committee on all the parties did.

12 Q. Okay. And having said that, there was an allocation that
13 was done in connection with the settlement, right?

14 A. There was an allocation of the amount to the various
15 different participating -- various different parties and the
16 debtors' estates, three debtor groupings I guess I should refer
17 to it as.

18 Q. And as I understand your direct testimony --

19 MR. PERRY: Strike that.

20 Q. Let's go to paragraph 70 of your direct testimony -- 75,
21 I'm sorry, sir, paragraph 75 of your direct testimony?

22 A. On page 30?

23 Q. Yeah. One of the items that the committee sought to
24 resolve in connection with the global settlement was the
25 treatment of intercompany balances, correct?

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1 A. That's correct.

2 Q. And under the plan, intercompany balances, as well as any
3 subrogation claims and fraudulent conveyance claims related to
4 the debtors' forgiveness of more than sixteen billion of
5 intercompany debt prior to the petition date will be waived,
6 canceled and discharged on the effective date. Do you see
7 that?

8 A. I do.

9 Q. Okay. And did the committee do any investigation with
10 respect to the waiver of sixteen billion dollars of claims
11 related to the debtors' forgiveness of intercompany debt before
12 the petition date?

13 A. As I testified earlier, we asked the committee counsel to
14 review the issues around the intercompany balances, and I
15 believe that that was part of the work that had been done.

16 Q. And from your perspective as the chair of the committee,
17 did the --

18 A. I'm sorry, co-chair.

19 Q. Co-chair of the committee, my apologies, did the claims
20 related to the debtors' forgiveness of more than sixteen
21 billion of intercompany debt prior to the petition date have
22 any value?

23 A. I'm sorry, could you restate that question? Just repeat
24 it, I'm sorry.

25 Q. Did the fraudulent conveyance claims related to the

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1 debtors' forgiveness of more than sixteen billion of
2 intercompany debt, prior to the petition date, have any value?

3 A. No.

4 Q. And you'd agree with me that certain of those claims
5 related to the forgiveness of debt with nondebtors, correct?

6 A. It's my understanding -- well, there is multiple different
7 intercompany transactions and balances. There were the
8 intercompany transactions between Ally and the ResCap entities,
9 and those are separate, you know, I'll call it a separate
10 grouping. They had security agreements, payments, interest, et
11 cetera.

12 And then there was a separate grouping of intercompany
13 balances and transactions that related to the ResCap entities.
14 Obviously, those were -- references were related to the ones
15 that were prior to the petition date, so they weren't debtor
16 entities at the time, they were ResCap entities.

17 Q. Okay.

18 A. And many of those entities were subsequently sold or never
19 went into Chapter 11, but all fell under the -- what I'll call
20 under the ResCap umbrella.

21 Q. Okay. And I just want to focus on the forgiveness, pre-
22 petition forgiveness, of intercompany claims with respect to
23 entities that are not currently debtors before this Court.

24 Do you know one way or another whether that is included in
25 the sixteen-billion-dollar figure that is set forth in

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1 paragraph 75 of your declaration?

2 A. I believe they were all part of the, what I referred to
3 earlier as the ResCap entities, some of which subsequently
4 filed Chapter 11, some of which didn't, some of which were sold
5 off, and so hence would never have been part of the Chapter 11
6 process, some of which might be regulated entities that
7 couldn't file a Chapter 11.

8 Q. Okay. So let's just focus on forgiveness that is not
9 current debtor-to-debtor pre-petition forgiveness. Can we just
10 focus on that category of forgiveness? Okay, you understand
11 what I'm talking about?

12 A. I do, yes, sir.

13 Q. And do you know what percentage of the sixteen billion
14 relates to forgivenesses by debtors to entities that are not
15 debtors in this proceeding?

16 A. Well, we looked at it, again, as ResCap entities and any
17 of the ResCap subsidiaries. So I don't have -- I never kind of
18 looked at it as what was eventually debtor versus nondebtor.
19 It was all part of the ResCap entities and never saw the
20 distinction or the need to have a distinction on that.

21 Q. Well, that's what I'm driving at, sir. If there is a
22 forgiveness of debt pre-petition and then a fraudulent transfer
23 claim relating to that pre-petition forgiveness, which as I
24 understand it is the subject of paragraph 75, is that right?

25 A. That's correct.

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1 Q. Okay. If the forgiveness in question was extended to an
2 entity that's not a debtor, what impact does that have on these
3 cases?

4 A. I'm not sure if you're asking me a legal question or not,
5 but I don't see any impact based upon the work that we had done
6 on this.

7 Q. To the extent that those were good claims, you'd agree
8 with me that they'd actually be bringing money back into the
9 estate, right?

10 A. You're asking me a hypothetical question. If they were
11 good claims, they might. If they weren't good claims, they
12 wouldn't. But I think you're asking for a legal conclusion,
13 and I can't give that.

14 Q. Why don't we look at -- have you reviewed any of Mr.
15 Renzi's expert reports submitted in connection with this
16 proceeding?

17 A. I have not.

18 Q. And with respect to claims that potential debtors may have
19 against nondebtors for pre-petition forgivenesses of
20 intercompany debt, those are all being released for zero as
21 part of the global settlement, right?

22 A. All of the issues surrounding the intercompany balances
23 are effectively be waived or released.

24 Q. Okay. But, for example, if prior to the petition date
25 there was a debt forgiveness accomplished with respect to a

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1 nondebtor entity for a billion dollars, the global settlement
2 would compromise that claim at zero, right?

3 A. Well, as I look at it, there was no -- these weren't
4 really debt instruments, these were effectively equity
5 transactions, movements of cash. From what I have seen, the
6 facts that I've heard, they weren't debt, they didn't have any
7 indicia of debt, they weren't treated like debt. And clearly,
8 the Ally entities, which included ResCap, knew how to treat
9 intercompany balances as debt, when they felt it was important
10 to do that as evidenced by, as I said earlier, the fact that
11 there were transactions between Ally and ResCap entities, which
12 had all of the typical things: loan agreements, payment
13 schedules, et cetera.

14 Q. And so --

15 A. These entities transactions didn't have any of that, so.

16 Q. So just to be clear, the committee didn't consider
17 bringing claims with respect to pre-petition forgivenesses of
18 debt to nondebtor entities, right?

19 A. The committee looked at all of the opportunities and as
20 part of the global resolution of this case we determined it was
21 appropriate to waive all of the intercompany balance issues and
22 not bring any actions. It was going to be a fruitful (sic)
23 exercise, it would have cost us just a tremendous amount of
24 money and possibly would have just blown up the mediation
25 process. And we were looking to get a resolution. And that

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1 was all part of the holistic approach that I have testified to.

2 Q. I guess that's why I'm focusing on waivers --

3 THE COURT: I don't care whether you guess that's why
4 you're focusing or not.

5 MR. PERRY: Okay.

6 THE COURT: Ask questions. Let's get this done. Move
7 along.

8 Q. How would the settlement of claims against nondebtors,
9 intercompany claims against nondebtors for zero value
10 facilitate the global settlement?

11 A. Well, we didn't think there was any value in them. So
12 trying to get, you know, all of the parties together and agree,
13 which would include, you know, granting releases to AFI,
14 getting the debtors to do their releases amongst themselves,
15 was something that was important as part of the process.

16 THE WITNESS: And I apologize, Your Honor, I need to
17 be careful that I'm not going too far in terms of the mediation
18 discussion, so.

19 Q. Let's talk about the settlement. In paragraph 51 of your
20 witness statement, there is a reference to a global -- a
21 mediation yielding a global compromise on or about May 13,
22 2013. Do you see that testimony?

23 A. I do.

24 Q. And just so I get the sequencing right, on or about May
25 13, 2013, Ally agreed to make a contribution of 2.1 billion

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1 dollars, correct?

2 A. Yes, subject to the finalization of the supplemental plan
3 term sheet, I think was the technical title of it.

4 Q. Okay. And the supplemental plan term sheet that you just
5 referenced is set forth in your testimony and discussed at
6 paragraph 52, correct?

7 A. That's correct.

8 Q. Okay. And the supplemental plan term sheet was not
9 finalized until roughly ten days later, correct?

10 A. That's correct.

11 Q. So on May 13th, Ally agreed to pay 2.1 billion dollars,
12 but it wasn't until May 23rd that the various creditors
13 subscribing to the settlement agreed how to allocate their
14 recoveries, correct?

15 A. Well, I don't think it was just the various creditors.
16 The debtors were involved in that, and I believe AFI had some
17 involvement, I don't think they really cared too much about
18 that. But it was the debtors and all of the consenting
19 claimants and the committee were all involved in that process.

20 Q. In other words, the debtors didn't care how the creditors
21 and the debtors -- the creditors of ResCap and the debtors, the
22 claimants, split up the 2.1-billion-dollar contribution,
23 correct?

24 MR. KERR: Objection.

25 THE COURT: Sustained.

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1 Q. Well, let me ask you this --

2 THE COURT: We're going to take our lunch recess. You
3 have ten minutes left on your cross-examination. During lunch
4 you can refine it. We will resume at 2 o'clock, you will have
5 ten minutes and that will be the end.

6 I'd like to see lead counsel at the bench.

7 You're excused.

8 THE WITNESS: May I step down? Thank you, Your
9 Honor. Can I leave my stuff?

10 THE COURT: Yeah, you can.

11 (Recess from 12:35 p.m. until 2:02 p.m.)

12 THE COURT: Please be seated.

13 Mr. Perry?

14 Mr. Dubel, you know you're still under oath.

15 THE WITNESS: Yes, Your Honor.

16 BY MR. PERRY:

17 Q. Mr. Dubel, directing your attention to PX-90 in your
18 binder.

19 A. PX-90?

20 Q. PX-90.

21 A. Thank you.

22 Q. This is a lengthy document, Mr. Dubel. In order to
23 facilitate use of the document, we've put in PX-90A and 90B
24 tabs. I'd ask you to flip to PX-90A.

25 A. Yes, sir.

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1 Q. This is a copy of the term sheet for the proposed Chapter
2 11 plan, correct?

3 A. It appears to be that, yes.

4 Q. And I believe your testimony was this PX-90A was finalized
5 on or about May 13, 2013, correct?

6 A. I don't recall saying that, but --

7 THE COURT: It's in your witness statement.

8 A. -- it's in my direct. Yes, I'm sorry. Yes. It was on or
9 about that date, yes.

10 Q. Okay. And directing your attention to page 99 of 145 on
11 the bottom of the document, it's page 3?

12 A. Yes.

13 Q. Under the text entitled plan and disclosure statement,
14 directing your attention to the third paragraph, it reads,
15 "Each of the consenting creditors has agreed to an allocation
16 of estate assets in the Ally contribution that will be set
17 forth in the supplemental term sheet." And that was the
18 supplemental term sheet that was not completed until some ten
19 days later, correct?

20 A. That's correct.

21 Q. Okay. And then it goes on, and it says, "On or before May
22 13th, 2013 the creditors' committee shall disclose to Ally in
23 writing such allocation which Ally will keep strictly
24 confidential subject to the confidentiality provision described
25 below and which shall not be changed in the supplemental term

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1 sheet absent obtaining consent from the parties for such
2 changes."

3 Do you see that text?

4 A. I do.

5 Q. And the disclosure that was made by the creditors'
6 committee on or before May 13, 2013 was the bottom line
7 recoveries negotiated by each of the consenting creditors,
8 correct?

9 A. When you say bottom line recoveries, it was the recoveries
10 that all of the creditors had agreed to, but it was subject to,
11 obviously, whatever the end results would be of the wind-down
12 of the ResCap estates.

13 Q. Sure. And just to put a point on it, go to 90B, and I'm
14 specifically interested in the document or the annex set forth
15 at page 132 of 145.

16 A. Yes, sir.

17 Q. Are you with me?

18 A. Yes.

19 Q. And these are, when I'm talking about bottom line
20 recoveries, at least for FGIC there was a recovery of 206.5
21 million that was negotiated, correct?

22 A. Again, subject to whatever the final results would be of
23 the liquidating trust certificate values.

24 Q. And with that same qualification, the 206.5 million dollar
25 recovery for FGIC was something that was agreed to on or before

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1 May 13th, correct?

2 A. That's correct.

3 Q. Okay. And then in the supplemental term sheet on page 120
4 of 145, directing your attention to the portion of the table
5 entitled monoline settlement. Are you with me? It's at the
6 bottom of page 120 of 145?

7 A. I am, yes.

8 Q. Okay. And specifically with respect to FGIC, this
9 document lays out the agreed claims at three debtor entities,
10 correct?

11 A. That's correct.

12 Q. And, again, subject to the qualification you gave earlier,
13 the intent of this document is that when those claims are run
14 through the bankruptcy process, it will yield a 206.5-million-
15 dollar recovery for FGIC, correct?

16 A. Subject to the qualification, yes, that's correct.

17 Q. Okay. And this allocation of claims was one of the items
18 that was done in the ten days between May 13th and May 23rd,
19 2013, correct?

20 THE WITNESS: Your Honor, I think I can answer that
21 without violating the mediation --

22 THE COURT: Okay, go ahead.

23 A. The answer is yes. I just don't want to go too far.

24 THE COURT: I understand.

25 MR. PERRY: Okay. No further questions.

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1 THE COURT: Thank you. Redirect -- oh, any other
2 cross? Go ahead.

3 CROSS-EXAMINATION

4 BY MR. SCHAFFER:

5 Q. Mr. Dubel, Eric Schaffer from Reed Smith. I'm here on
6 behalf of Wells Fargo as collateral agent.

7 Are you familiar with Wells Fargo's role as collateral
8 agent in connection with the AFI revolver or the junior secured
9 notes?

10 A. I am not.

11 Q. All right.

12 Do you have any understanding as to whether Wells Fargo's
13 got a secured claim in this case?

14 A. I have no understanding.

15 Q. Do you have any understanding as to whether Wells Fargo as
16 collateral agent released liens on collateral during the course
17 of its serving as collateral agent?

18 A. I have no understanding.

19 Q. Okay. Are you familiar with the objection to confirmation
20 that Wells Fargo filed?

21 A. I apologize, I have not read it, no.

22 Q. Now you're shortening things.

23 Did the committee ever discuss a reserve for any Wells
24 Fargo indemnification claim?

25 A. I don't recall any discussions along those lines.

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1 Q. Have you seen -- have you heard that the JSNs might assert
2 a claim against Wells Fargo in connection with its conduct as
3 collateral agent?

4 A. I have not.

5 Q. Did the committee conduct any investigation of claims that
6 might be asserted by the JSNs against Wells Fargo?

7 A. I don't recall any discussion along those lines.

8 Q. Does the committee have any basis for believing that the
9 JSNs will or will not sue Wells Fargo?

10 MR. KERR: Objection.

11 THE COURT: Sustained.

12 Q. So in fact, you don't know whether they might sue Wells
13 Fargo or not?

14 MR. KERR: Objection.

15 THE COURT: Sustained.

16 Q. Do you have any understanding as to whether the debtors
17 are obligated to pay any fees or expenses of Wells Fargo as
18 collateral agent?

19 A. I don't have any understanding.

20 Q. Am I correct, the plan proponents agreed to seek
21 confirmation of a plan regardless of whether or not the JSNs
22 won or lost in the phase 1 litigation?

23 THE COURT: I really don't understand your question.

24 MR. SCHAFFER: Let me try it again, Your Honor.

25 Q. Am I correct that under the plan, the JSNs are to be paid

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1 whatever they are owed. If they are oversecured, they will
2 collect post-petition interest; if they're undersecured, they
3 won't?

4 MR. O'NEILL: Objection, Your Honor.

5 THE COURT: Sustained. It's a legal issue. I think
6 in openings it was agreed. And certainly it was something that
7 I said I wasn't going forward with confirmation unless that was
8 the case.

9 Q. One last question for you.

10 Do you know of any reason why Wells Fargo would not be
11 included as a released party in the plan?

12 A. I don't know what Wells Fargo's position is, so I wouldn't
13 have an opinion on whether they are or they're not.

14 MR. SCHAEFFER: That's it.

15 THE COURT: All right. Who else? Any other cross-
16 examination?

17 MR. PERRY: Your Honor, I just before -- I had one
18 housekeeping matter.

19 THE COURT: Go ahead.

20 MR. PERRY: I had asked Mr. Dubel a series of
21 questions about his deposition transcript and the witness read
22 it to himself, but it didn't appear in the record. It's
23 just --

24 THE COURT: I thought I called it out by page and line
25 number.

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1 MR. PERRY: As long as we can have a stipulation --

2 THE COURT: Somebody else -- I mean, there's a
3 transcript.

4 MR. COHEN: Whatever is in the record is in the
5 record. What's in his transcript doesn't come in.

6 THE COURT: You want to call out page and line number.
7 Look, I think I did, but go ahead -- you want to -- refer to
8 the page and line number in the deposition. I know I did it
9 before.

10 MR. PERRY: Okay. So, I know you referred to the page
11 and line number --

12 THE COURT: Just do it. Let's just do it.

13 MR. PERRY: It's page 37, line 3 to 15, and we would
14 move that testimony in.

15 THE COURT: Well, you don't move it in, you can't move
16 it into evidence. You can -- you asked a question based on it.

17 MR. PERRY: Okay. So can I read it into the record.

18 MR. COHEN: I object.

19 THE COURT: Just do it. Let's just get it over with.

20 MR. PERRY: The question was --

21 THE COURT: Waste of time.

22 MR. PERRY: -- "Did the committee's approach to
23 mediation which was developed before the mediation attempt --
24 attempt or not attempt to allocate value or quantify claims
25 held by individual creditors or debtors as a part, as part of

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1 achieving a global settlement?

2 "Answer: Well, the committee attempted to understand
3 what the values of the various claims were prior to the
4 mediation, so it could, you know, work through the mediation
5 process, and prior to that work through the process of coming
6 up with a fair allocation of all the funds and value that would
7 be available to all the various different creditors."

8 THE COURT: That's probably the second or third time
9 that's now appeared in the record.

10 Mr. O'Neill, do you have questions?

11 MR. O'NEILL: Before I begin, Your Honor, I'd like to
12 offer the declaration into evidence. I think Mr. Perry had a
13 reservation and I don't think his -- or his questions were not
14 were answered in any way.

15 THE COURT: Mr. Perry?

16 MR. PERRY: No objection, Your Honor.

17 THE COURT: All right, let me just find my notes here.
18 The direct witness testimony of John Dubel, and there are two
19 declarations, one is ECF 5697, the other is ECF 5692, and both
20 are in evidence.

21 (Direct testimony of John Dubel - two declarations was hereby
22 received into evidence as Plan Proponents' Exhibit, as of this
23 date.)

24 REDIRECT EXAMINATION

25 BY MR. O'NEILL:

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1 Q. Mr. Dubel, would you turn to Exhibit AYQ?

2 THE COURT: Where is that in the binder?

3 MR. O'NEILL: It's towards the front.

4 THE COURT: Okay.

5 MR. O'NEILL: It's one inch into eight inches of
6 documents.

7 THE COURT: That's fine.

8 A. So you said AYQ?

9 Q. AYQ.

10 A. Yes, I have it.

11 Q. Mr. Perry asked you a series of questions --

12 MR. O'NEILL: Strike.

13 Q. This appears to be an e-mail chain and Mr. Perry asked you
14 a series of questions about the last e-mail in the chain. Do
15 you recall that?

16 A. I do.

17 Q. Would you turn to the first page and look at the next
18 e-mail up in the chain?

19 A. The one at the bottom of the first page?

20 Q. Yes. Would you read the second paragraph of that -- who
21 is that e-mail from and who is it to?

22 A. It appears to be from Mr. Todd Goren to Kenneth Eckstein,
23 Gary Lee, with copies to Douglas Mannal and Lorenzo Marinuzzi.

24 Q. And would you read the second paragraph of that e-mail?

25 MR. PERRY: Objection, Your Honor. Hearsay.

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1 THE COURT: Overruled.

2 A. "Our position remains the same, that most, if not all of
3 the intercompany claims are likely invalid. What we've put in
4 the plan is essentially a placeholder. To the extent we cannot
5 reach a consensus with the various parties as to the treatment
6 of those claims under the plan, we would expect to file
7 something to tee the issue up before the court.

8 THE COURT: Just to be clear I've permitted that to be
9 read into evidence based on the rule of completeness, since Mr.
10 Perry dealt with other aspects of Exhibit AYQ.

11 Q. Mr. Dubel, do you have an understanding as to the position
12 the debtors have taken with respect to the validity or
13 invalidity of intercompany claims during the course of this
14 case?

15 A. Yes. It's my understanding the intercompany balances they
16 viewed as not being valid, not have any debt-like validity.

17 Q. And to what extent, if any, has the debtors' position
18 changed concerning that matter during the course of the case?

19 A. To my understanding it hasn't changed since the very
20 beginning when I first understood this in the early summer of
21 2012.

22 Q. Thank you, Mr. Dubel.

23 MR. O'NEILL: I have nothing else Your Honor.

24 THE COURT: Any further examination from any party?

25 You're excused, Mr. Dubel.

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1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 THE WITNESS: Your Honor, what --

4 THE COURT: Somebody will come up and get it. You
5 don't have to lug your documents. Okay. Thank you.

6 (Pause)

7 MR. KERR: Your Honor, Charles Kerr of Morrison &
8 Foerster, on behalf of the debtors.

9 In support of the joint Chapter 11 plan proposed by
10 the debtors and the official committee of unsecured creditors,
11 debtors offer the direct testimony of Lewis Kruger dated
12 November 12, 2013, which was filed as docket entry number 5709.

13 If Mr. Kruger was called to testify, he would testify
14 to what is in his written direct testimony. We therefore offer
15 his written direct testimony in factual support of the
16 consolidated proceedings and the plan confirmation.

17 THE COURT: Mr. Cohen?

18 MR. COHEN: Your Honor, we have an objection to one
19 paragraph in Mr. Kruger's testimony that we'll cross-examine
20 him ,and then I think we can deal with the objection
21 afterwards.

22 THE COURT: Okay. But I need a copy of his -- are
23 there exhibits as well?

24 MR. KERR: Yes

25 THE COURT: All right.

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1 MR. KERR: But Your Honor, just so you know for this,
2 because he is -- we'll bring the exhibits up to you right now.

3 THE COURT: Okay.

4 MR. KERR: Give us a second, Your Honor. It's heavy.
5 I think, Your Honor, the direct testimony is in volume one.

6 THE COURT: It is. Okay.

7 MR. KERR: I believe.

8 THE COURT: All right. How are you going to deal with
9 the exhibits? Are you going to wait? Is that what --

10 MR. KERR: Your Honor --

11 THE COURT: It's okay with me.

12 MR. KERR: -- I was going to read them off and
13 introduce them.

14 THE COURT: Well, why don't you read them off. How
15 many new exhibits are there?

16 MR. KERR: Probably about twenty, I think, Your Honor.

17 THE COURT: All right. Why don't you read them off?

18 MR. KERR: May I do one thing just very quick?

19 So, Your Honor, again, first I've offered Mr. Kruger's
20 testimony --

21 THE COURT: Yeah, I'm going to withhold, I'm going to
22 reserve ruling until cross-examination

23 MR. KERR: Okay.

24 MR. COHEN: Thank you, Your Honor..

25 MR. KERR: And in connection with Mr. Kruger's direct

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1 testimony, we also offer the following exhibits, all of which
2 have been previously identified in the plan proponents' trial
3 exhibit list..

4 Your Honor, I've broken them into two groups, some are
5 being offered not for the truth, and let me list those first.

6 THE COURT: Okay.

7 MR. KERR: Those would be Exhibits 801, 802, 803, 804,
8 808, 809, 811, 812, 819, 821, 823, 824, 834, 836, 838, 839,
9 841, 842, 843, 844, 847, 850, 861, 870, 894 and 934.

10 It was a little more than I expected, Your Honor, but
11 those are the ones we're offering, not for the truth, but to
12 show the type of information Mr. Kruger reviewed in his role as
13 CRO.

14 THE COURT: Okay.

15 MR. COHEN: No objection, Your Honor.

16 THE COURT: All right. Exhibits 801, 802, 804, 808,
17 809, 811, 812, 819, 821, 823, 824, 834, 836, 838, 839, 841,
18 842, 843, 844, 847, 850, 861, 870, 894 and 934 are all
19 introduced in evidence not for the truth of the matters
20 asserted.

21 (Exhibits regarding Mr. Kruger's testimony were hereby received
22 into evidence as Plan Proponents' Exhibits 801, 802, 804, 808,
23 809, 811, 812, 819, 821, 823, 824, 834, 836, 838, 839, 841,
24 842, 843, 844, 847, 850, 861, 870, 894 and 934 , as of this
25 date.)

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1 MR. KERR: And Your Honor, I have a few more exhibits
2 that make up, they're either previous orders of the Court or
3 materials that were submitted by the debtors, like the plan or
4 the disclosure statement. Let me just run those for you.

5 859, 860, 862, 863, 864, 866, 872, 875, 876 and 877.

6 MR. COHEN: And for what purpose are these being
7 offered?

8 MR. KERR: They are prior orders of the Court, which
9 Mr. Kruger is aware of and refers to in his testimony. They're
10 also, Your Honor, the original versions of the plan and
11 disclosure statement, the amended plan and disclosure
12 statement. I'm just putting in the record, so I can --

13 THE COURT: To the extent you're hearsay, you're not
14 offering them for the truth of the matter asserted.

15 MR. KERR: I'm not offering them for the truth, but I
16 think the orders speak for themselves.

17 MR. COHEN: No objection, Your Honor.

18 THE COURT: The orders would have independent legal
19 significance. So --

20 MR. KERR: Yeah.

21 THE COURT: No objection, Your Honor.

22 THE COURT: All right. So Exhibits 859, 860, 862,
23 863, 864, 866, 872, 875, 876 and 877 are in evidence.

24 (Exhibits regarding Mr. Kruger's testimony were hereby received
25 into evidence as Plan Proponents' Exhibits 859, 860, 862, 863,

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1 864, 866, 872, 875, 876 and 877, as of this date.)

2 MR. KERR: And there is only one more document, Your
3 Honor, and that would be Exhibit 846 --

4 THE COURT: I'm sorry, E-46?

5 MR. KERR: 846.

6 THE COURT: 846.

7 MR. KERR: And this is a copy of Mr. Kruger's
8 engagement letter as amended and as approved by the Court on
9 March 1, 2013.

10 THE COURT: Mr. Cohen?

11 MR. COHEN: No objection.

12 THE COURT: All right. Exhibit 846 is in evidence as
13 well.

14 (Engagement Letter was hereby received into evidence as Plan
15 Proponents' Exhibit 846, as of this date.)

16 MR. KERR: With that, Your Honor, Mr. Kruger is
17 available to be cross-examined.

18 THE COURT: Okay. Before you start your cross-
19 examination, and I may do this from time to time during the
20 trial, and it may shape witness examinations. It's not ruling
21 on anything, but primarily based on reviewing both the joint
22 pre-trial order and reviewing the briefs on confirmation, there
23 are a number of issues on my mind that I hope that the evidence
24 and arguments later will address. Some of these I've seen in
25 briefs and things like that, but I just thought it would be

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1 useful for me to tell you some of the things I'm interested in.
2 I may do this from time to time during the trial.

3 While I'm not ruling on it, it seemed to me that the
4 request for adequate protection from the JSNs here does not
5 arise out of the cash collateral order, but rather from Section
6 363 in the use, sale, or disposition of the JSNs' collateral --
7 assuming it is collateral. And what's not clear to me is
8 whether the security agreement was intended to give the JSNs
9 liens on intercompany claims.

10 If the JSNs have a lien on intercompany claims, so
11 does AFI. It was the issue I raised yesterday about the
12 revolver. And one question I had was did the issue ever arise
13 whether AFI has a lien on the intercompany claims. Were
14 intercompany claims ever recorded by AFI as its collateral?
15 Were any books and records entries ever made by the debtors or
16 AFI showing a release of collateral when intercompany debts
17 were forgiven?

18 There's already been testimony about 16.6 billion
19 dollars of intercompany claims being forgiven.

20 The intercompany claims may have been enforceable
21 debts, treated as such by the debtors and AFI, recorded in the
22 books and records, and tested for impairment, but this may not
23 be sufficient to sweep the debts within the security interests
24 of either AFI or the JSNs. Are there any facts establishing
25 the intent of the parties whether such debts were subject to

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1 the liens of AFI or the JSNs?

2 It seemed to me that there are at least three steps in
3 the necessary analysis. First, were there valid intercompany
4 debts at issue that's disputed? Second, did the JSNs have a
5 lien on such debts? And third, were those debts properly
6 released under the applicable loan security and intercreditor
7 agreements.

8 If the first or second inquiries result in a
9 conclusion that the JSNs have no lien, it would seem to me the
10 inquiry ends. If the JSNs had a lien the third question may
11 then be determinative. If the liens had value and were not
12 permissibly released, the JSNs arguably would be entitled to
13 compensation for the disposition of their property either
14 through an adequate protection claim or direct recovery.

15 I'll stop there. Those are just -- I mean after
16 listening to the openings and as you get into the meat of the
17 testimony, those are some of the things that are on my mind,
18 having read the briefs and listening to the openings.

19 I may do this from time to time when there are other
20 things on my mind.

21 MR. COHEN: Thank you, Your Honor.

22 THE COURT: I'm not trying to hide the ball about what
23 I'm thinking about.

24 MR. COHEN: I think that's very helpful and I think
25 Mr. Kruger may testify as to some of those issues.

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1 THE COURT: That's why I did it now.

2 MR. COHEN: Yeah, and it will certainly help us going
3 forward.

4 THE COURT: Okay. All right.

5 MR. KERR: I'm going to ask Mr. Kruger to come up.

6 THE COURT: Yes, please.

7 If you would raise your right hand and be sworn, Mr.
8 Kruger.

9 (Witness sworn)

10 THE COURT: Thank you very much. I think somebody has
11 put up a bottle of water for you if you need that.

12 THE WITNESS: Thank you.

13 THE COURT: And Mr. Cohen is going to bring you a
14 binder. I don't know whether you can take some of the other
15 binders away or have some of your colleagues come up.

16 But does he need those?

17 MR. COHEN: These six are the debtors'.

18 THE COURT: Those are his. Okay. That's fine.

19 MR. COHEN: So I can move them over here.

20 THE COURT: No, just leave them here.

21 MR. COHEN: The JSNs have a very small compact binder.

22 THE COURT: Yeah, I see that. I'm appreciative

23 THE WITNESS: I think I need to be taller.

24 CROSS-EXAMINATION

25 BY MR. COHEN:

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1 Q. Good afternoon, Mr. Kruger. As you know, I'm David Cohen
2 with Milbank, Tweed, Hadley & McCloy, representing the JSN ad
3 hoc group and the notes trustee.

4 A. Good afternoon.

5 Q. It's nice to see you.

6 Mr. Kruger, you understand that the debtors designated you
7 as their corporate representative with respect to ResCap's
8 decision to waive, settle, cancel or discharge the intercompany
9 claims, right?

10 A. Yes.

11 Q. And you're able to testify as to that, aren't you?

12 A. Yes, I am.

13 Q. And the debtors also designated you as their corporate
14 rep --

15 THE COURT: Just pull the microphone a little closer
16 to you, Mr. Kruger. Okay. Thank you.

17 Q. The debtors also designated you as their corporate
18 representative with respect to all matters related to the
19 treatment of the JSN claims under the plan, right?

20 A. That's correct.

21 Q. And you're able to testify as to that, correct?

22 A. Yes.

23 Q. Finally, the debtors designated you as their corporate
24 representative to testify with respect to all matters relating
25 to the allocation of the Ally contribution on a claim-by-claim

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1 basis and the allocation of the Ally contribution as set forth
2 in the disclosure statement?

3 A. Well, I think I'm designated to respond to the first half
4 of that. I can allocate for the proceeds of the AFI
5 contribution, but I don't think I ever did them in terms of the
6 individual claims or the individual creditors --

7 Q. And we'll get --

8 A. -- or the causes of action against Ally and the like.

9 Q. And we'll get into that in more detail, but you do
10 understand that with respect to that category, the debtors have
11 designated you as the representative?

12 A. Yes.

13 Q. And you can testify as to that, right?

14 A. I can.

15 Q. Now, when up became the CRO of ResCap, which I believe you
16 started working at the end of February and the order was
17 entered March 5th, is that right?

18 A. That's correct.

19 Q. Okay. When you started working as the CRO of ResCap, you
20 understood that the JSNs were asserting a lien on the
21 intercompany claims, didn't you?

22 A. Not when I started, but it took me a while to get involved
23 with the factual background, and then I learned that the JSNs
24 were asserting that claim.

25 Q. And you learned that fairly early in your tenure as CRO,

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1 right?

2 A. Well, I became involved as a CRO probably during mid
3 February and probably learned about the JSNs views during the
4 course of the following two or three weeks.

5 Q. Okay. All right. In your mind, you reached the
6 conclusion that the JSNs did not have a lien on the
7 intercompany balances, didn't you?

8 A. I don't know that I ever reached a conclusion with respect
9 to the lien. I had lots of presentations by my counsel, my
10 financial advisors, the creditors' committee, their counsel,
11 their advisors, others among the creditor community, all of
12 which took the view, or many of which took the view that the
13 question of whether or not the JSNs had a lien on the
14 intercompany claims was certainly subject to doubt, and in my
15 own review of those, I came to the conclusion that I did not
16 think they had a lien on them because I thought they were
17 general intangibles and not the subject of a JSN lien. But
18 that's not my decision, so to speak.

19 Q. Okay. So it was your view, the conclusion you reached
20 after all of these presentations was that the intercompany
21 balances were a general intangible and the JSNs did not have a
22 lien on general intangibles; that was your conclusion, right?

23 A. That was my conclusion, but that was not the only reason
24 why I thought it was appropriate if I'm being asked to waive
25 those claims as part of the global settlement.

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1 Q. We'll get to that. We'll get to that.

2 Now you don't intend to waive privileged communications
3 you had with the lawyers of Morrison & Foerster?

4 A. Certainly -- certainly not.

5 Q. So if I asked you what did your lawyers tell you, you
6 would tell me I'm not answering, correct?

7 A. Correct.

8 Q. All right. And did you believe you had a common interest
9 with the creditors' committee with respect to this issue?

10 MR. KERR: Objection, Your Honor.

11 THE COURT: Sustained.

12 A. I'm not sure exactly --

13 THE COURT: No, stop, stop. Sustained.

14 Q. When you were having conversations with lawyers for the
15 creditors' committee, regarding whether the JSNs had a lien on
16 the intercompany balances, did you believe that those were
17 privileged conversations?

18 A. I believed that they are part of the mediation process,
19 and I thought about them in that context.

20 Q. Okay. And you don't intend to waive mediation
21 confidentiality, do you?

22 A. No, I do not.

23 Q. So if I asked you what you thought about, in terms of your
24 conversations with the creditors' committee, in connection with
25 the mediation, you'd refuse to answer.

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1 THE COURT: Mr. Kerr would rise and object and I would
2 sustain the objection.

3 MR. COHEN: All right, terrific.

4 Q. So I'm not going to ask you what happened at the
5 mediation.

6 What did you do to come to have an understanding as to
7 whether there was value in the intercompany balances at ResCap?

8 A. Well, as I said, I had many conversations with my counsel,
9 with my financial advisors, with other counsel for the other
10 interested parties with respect to the intercompany claims, and
11 I thought that the intercompany claims were intercompany
12 balances recorded on the books of the debtor, but it did not
13 seem to me that they had the indicia that are usually thought
14 about in connection with actual debt, enforceable collectable
15 debt. They lacked, in most cases, documentation, they lacked
16 maturity dates, they lacked interest rates, they lacked
17 security. They did not look to me like debt, and so I did not
18 think that they were of great value, if any.

19 Q. Did you discuss the intercompany balances with members of
20 the debtors' accounting staff?

21 A. Yes.

22 Q. Specifically, who did you have those discussions with?

23 A. I think I've testified in my deposition that I think I had
24 them with Barbara Westman, with Tammy Hamzehpour, with Jim
25 Whitlinger, at one point. There may be others as well, but I

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1 don't recall offhand, sitting here today.

2 Q. During those conversations, did you ask those individuals,
3 that you just identified, whether they viewed the intercompany
4 balances as legitimate debt?

5 A. Well, we discussed it, but I really came to my own
6 conclusion based on what I saw of the debt or the intercompany
7 balances, as they were described to me.

8 Q. Did any of those four people, that you identified, tell
9 you that they didn't view the intercompany balances as
10 legitimate payables or receivables?

11 MR. KERR: Objection.

12 THE COURT: Overruled.

13 A. I think that they had the view that part of their
14 engagement was to record properly the intercompany balances and
15 the intercompany transactions on the books and records of the
16 debtor, but not -- not, so to speak, binding upon me as to
17 whether or not they thought they were debt or not.

18 Q. When you say not binding upon you as to whether they
19 thought it was debt or not, what do you mean?

20 A. Well, I think whatever they may have thought about them, I
21 had my own view with respect to them.

22 Q. What I'm asking you is did they tell you that they didn't
23 view them as payables and receivables as they were booked on
24 the books and records of ResCap?

25 A. I had a lot of conversations with them. I don't recall

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1 what they said about them other than that they recorded them.

2 Q. Okay. Do you think those four individuals were competent
3 at their jobs?

4 A. Oh, yes, I'm sure they are.

5 Q. Did you have any reason or do you have any reason, in the
6 time that you've been the CRO of the debtors, to believe that
7 they were intending to mislead anybody through the debtors'
8 books and records?

9 A. No.

10 Q. Have you seen any evidence at all that the debtors' books
11 and records were anything but accurate and well kept?

12 A. I assume they're accurate and well kept.

13 Q. And you have no evidence to suggest otherwise, right?

14 A. Correct.

15 Q. Okay. When you undertook your investigation as to the
16 value of the intercompany balances, did you look at any
17 particular balances or did you look at them all together?

18 A. I looked at them primarily all together, because in my
19 mind, if I were to look at them individually, then I would get
20 into the whole issue of whether or not you select one out of
21 the many, many tens of thousands of recorded intercompany
22 balances to see if there's one that maybe fits some of the
23 characteristics of looking like debt.

24 Once you do that, if I then seek to assert an intercompany
25 debt against a counterparty, I assume that they would then seek

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1 to assert their claims against other counterparties. I would
2 then invite all of the contestants, who are so rife in this
3 case, to participate, and I would never have gotten around to
4 the global settlement. So in my own mind, I did not value
5 intercompany claims as being significant.

6 Q. All right. Do you know whether, if you just looked at the
7 top ten intercompany balances at ResCap, whether that covered
8 ninety-six percent of all of the intercompany balances?

9 A. Well, it depends what you mean by that, in the sense
10 that -- I'll give you the answer that I think is correct. Once
11 you start down that road, you also have to look at, in my mind,
12 the sixteen billion dollars of forgiveness during the prior
13 four years before the commencement of the case, roll those into
14 the case, and then look and see what really are the ten
15 largest, and which ones are meaningful and which ones are not,
16 if any of them are meaningful. When you look at debt as it's
17 alleged between two related companies, that always, in my mind,
18 raises a question as to the validity and the meaningfulness of
19 that relationship. So I'm not sure if that's an answer to your
20 question, but it's as close as I can come to it.

21 Q. Well, why would you have to look at the sixteen billion
22 dollars of forgiveness? Why is that relevant to your
23 determination as to the value of the intercompany balances that
24 existed on the debtors' books when you became the CRO?

25 A. Because I don't think you can do it in a vacuum. I think

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1 you need to -- I assumed that I would be in fraudulent transfer
2 litigation, I would be in litigation with respect to the
3 interdebtor issues, and that would give rise to issues among
4 the creditors again because various of the creditors would have
5 and did have their own views as to what the intercompany claims
6 meant, what they might have meant for their own individual
7 claims. So it's sort of like taking out the one brick from the
8 middle of the Roman arch and then you start everything going.
9 So in my mind you needed to look at all of it.

10 Q. What was your understanding of the circumstances under
11 which intercompany debt was forgiven at ResCap in the four
12 years before you came the CRO?

13 A. I understand that it was forgiven for -- to find net worth
14 covenants, to liquidity issues and the like, and for a variety
15 of different reasons, over the course of time, and that was a
16 history that went back more than just the four years before the
17 filing of the commencement of the proceeding.

18 I looked at the fifth year and that also had significant
19 debt forgiveness, which again, in my mind, if you look at a
20 company that for gives three or four billion dollars of
21 intercompany balances every year, it would give me some pause
22 as beginning to think is this really real. It gives me pause
23 to think that perhaps it's not really an intercompany balance
24 that works as debt.

25 Q. And that was your own conclusion?

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1 A. Correct.

2 Q. Do you know Ms. Gina Gutzeit?

3 A. I've heard her name, yes.

4 Q. Have you ever met her?

5 A. No.

6 Q. Did you help her in preparing her expert report in this
7 case?

8 A. No, I did not.

9 Q. Have you read her expert report in this case?

10 A. No, I have not.

11 Q. So I take it you don't have an opinion as to whether she's
12 right or wrong with respect to her opinions?

13 A. I certainly hope she's right with respect to her opinions,
14 but I have not read her report.

15 Q. All right. She didn't call you and try to get your input
16 on her opinions?

17 A. No, she did not.

18 Q. All right. Now you testified that you thought that
19 looking at the intercompany balances on a one-by-one basis
20 would make it, I think you said impossible to get to the global
21 settlement; is that your testimony?

22 A. I think it has several aspects to it. I think one is that
23 in order to really examine the intercompany claims -- and as I
24 said, I understand that there are tens of thousands of them --
25 one would have to go back and try to understand how they

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1 originated, why they originated, what the relationships were at
2 the time that they originated, what you do with the forgiveness
3 over the course of time. So that's sort of one aspect of it.

4 The second aspect of it was that I was concerned that if I
5 started to the go down that road, I would also then be opening
6 the floodgates, if you will, to litigation from other creditor
7 communities with respect to the intercompanies and then back to
8 litigating with each other, litigating with AFI and would
9 defeat the purposes of trying to achieve the global settlement,
10 which was my goal, if you will, with respect to these
11 proceedings.

12 Q. The fact that you believed the JSNs didn't have a lien on
13 the intercompanies influenced your view as to whether you
14 should investigate further the value of the intercompanies,
15 though, didn't it?

16 A. Well, it was one of the subjects I took into
17 consideration. But if they did indeed have a lien on the
18 intercompany claims and if the intercompany claims had value --
19 and I don't know whether they do or don't -- nonetheless, I
20 would still have taken the view that they should be waived for
21 the purposes of achieving the global settlement, because I
22 thought that if I did not do that, then the parties to the
23 global settlement would not be able to come to a conclusion
24 with respect to the global settlement and we'd be back into the
25 litigation mode. So I certainly thought about the lien, but it

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1 wasn't a controlling factor.

2 Q. But you also understand, and I believe you testified to
3 this in your deposition, that if the JSNs are able to prove a
4 lien, then they are able to prove that the intercompanies are
5 valuable, to the extent they're over secured they'll get their
6 post-petition interest, right?

7 A. As I said, God bless them.

8 Q. Would you look at, in your binder, the second to the last
9 tab? And it has the label DX-AMJ.

10 A. Got it.

11 Q. And this is a document entitled "Amended Schedules of
12 Assets and Liabilities for GMAC Residential Holding Company,
13 LLC".

14 A. Um-hum.

15 Q. Have you seen this document before?

16 A. I think you showed it to me at my deposition.

17 Q. Okay. Do you know what it is?

18 A. I think it's what it says it is, the "Amended Schedule of
19 Assets and Liabilities for GMAC Residential Holding".

20 Q. All right. And given your fifty years as a bankruptcy
21 practitioner, what do you understand this document -- the
22 purpose of this document to be?

23 A. It's to provide a schedule, for the benefit of the Court
24 and other parties, of assets and liabilities of the debtor.

25 Q. You're not aware of anyone putting false information on

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1 the debtors' schedules of assets and liabilities, are you?

2 A. No, I'm not.

3 Q. And it would be your belief that the debtors would do
4 everything they can to make sure this is as accurate as
5 possible, right?

6 A. Yes.

7 Q. So if you look at the actual schedule, it is the fourth
8 page in the document, and it says page 1 of 1 at the bottom?

9 THE COURT: Every one of them says 1 of 1.

10 MR. COHEN: Yes, it has blue bar at the top. Yeah,
11 unfortunately they all say 1 of 1. There's a blue bar at the
12 top and then it has four items listed, the first being GM --

13 THE WITNESS: I have --

14 THE COURT: We have black bars, but --

15 THE WITNESS: I have black bars, but --

16 MR. COHEN: Oh, I'm sorry.

17 THE WITNESS: I have one that says --

18 Q. It says page 4 of 13 at the top.

19 A. Yes, I have that.

20 Q. All right.

21 THE COURT: I'm with you too.

22 Q. And about a third of the way in from the right, there is a
23 column that says, "Date claim was incurred and consideration
24 for claim". And you see for those four balances, which total
25 about 3.4 billion, it's listed as intercompany payable. Do you

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1 see that?

2 A. Yes, I do.

3 Q. What is your understanding of what a payable is?

4 A. It's an obligation from one entity to another.

5 Q. Okay. And you also believe that when the ResCap employees
6 put this together and caused it to be filed with the bankruptcy
7 Court, they intended it to be an accurate assessment, correct?

8 MR. KERR: Objection, Your Honor.

9 THE COURT: Overruled.

10 A. I think that is correct, but I recognize that this is the
11 amended schedule of assets and liabilities, and I believe that
12 in the original asset and liability schedule, with respect to
13 this schedule, there was a reservation of rights by the debtor
14 indicating that although these were listed, they were not
15 necessarily to be considered to be valid intercompany payables.

16 Q. Okay. At what point in this bankruptcy case did the
17 debtors first publicly take the position -- and by publicly I
18 mean it's something filed on the docket in this Court -- that
19 the intercompany payables, which were the payables and the
20 receivables, were not really liabilities and assets, they were
21 more like equity? When was the first time that happened?

22 MR. KERR: Objection, Your Honor.

23 A. I have no idea.

24 Q. Do you know whether it happened before the results of the
25 mediation and the global settlement were announced?

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1 A. Well, I think, as I said, in the original schedule, of
2 which this is an amendment, I believe there was a reservation
3 of rights with respect to intercompany payables. So I'm not
4 sure I can do anything earlier than that. That, as I said, was
5 before my coming on board in mid February. But I believe that
6 that is correct.

7 Q. Well, certainly there was the reservation of rights. My
8 question is when did the debtors first invoke that reservation
9 of rights to treat -- in a public way on the docket in this
10 case, treat these intercompany payables and receivables as
11 something other than intercompany payables and receivables?

12 MR. KERR: Objection.

13 THE COURT: Sustained.

14 Q. When did ResCap, the company of which you are the CRO,
15 first make a public statement that they did not consider the
16 intercompany payables and receivables to be true debt?

17 A. I thought --

18 MR. KERR: Objection, Your Honor.

19 THE COURT: Overruled.

20 A. I thought they did that when they filed their original
21 schedules with the reservation of rights with respect to the
22 intercompany payables. Am I missing something?

23 THE COURT: I think Mr. Cohen's question really is
24 different. It's one thing to reserve your rights, and then
25 it's another thing to take the position with -- I think his

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1 question fairly addresses, do you know when the debtors took
2 the position that the intercompany debts were not valid debts?
3 Is that a fair --

4 MR. COHEN: That is a more articulate form --

5 THE COURT: No, it's not. It's just --

6 MR. COHEN: -- of my question; thank you.

7 THE COURT: I think that was really the question.

8 A. The answer is I don't know.

9 THE COURT: Okay.

10 Q. Okay.

11 Now, let's talk about the Ally contribution.

12 Do you agree that the 2.1 billion dollar contribution is
13 really the keystone of the global settlement and the plan?

14 A. It is certainly an important aspect of it.

15 Q. All right. And you understand, at the time you became CRO
16 and you were participating in mediation, Ally believed it had
17 claims against -- sorry, ResCap believed it had claims against
18 Ally, right?

19 A. Yes.

20 Q. All right. But you, as CRO, never undertook an effort to
21 either identify specific claims or quantify the value of those
22 claims, right?

23 A. I certainly took an effort to identify the claims. I had
24 many, many presentations about the nature of the claims that
25 might be asserted by the debtor against Ally, by the creditors'

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1 committee against Ally, but I did not seek to ever value the
2 individual claims.

3 Q. What type of claims were identified to you?

4 A. Well, ranging from alter ego, piercing the corporate veil,
5 aiding and abetting, domination and control, those kinds of
6 claims.

7 Q. Did anybody identify contract claims to you?

8 A. I think -- I'm not sure what contract claims you have in
9 mind, but I certainly had presentations made about other kind
10 of claims that might be thought about.

11 Q. Did the presentations also include potential breaches of
12 contract by Ally vis-a-vis ResCap?

13 A. Well, I'm not sure how to answer that question. But, for
14 example, I know that the JSNs alleged that there is some value
15 to the tax allocation agreement and that that's a contract
16 claim. I had presentations about that to me as well.

17 So I think I encompassed just the ones I mentioned. But I
18 think all of the things that anybody thought, at least on the
19 debtors' side and the creditors' committee side, might be
20 claims against Ally.

21 Q. All right. So you were knowledgeable about the potential
22 claims when you went into the mediation, right?

23 A. Yes, I was.

24 Q. And you understand now that one of the things that Ally
25 wants, as a result of the mediation and as part of the bargain

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1 for its 2.1 billion dollar payment, is a release on all claims
2 ResCap has against Ally, right?

3 A. Correct.

4 Q. And among those, they also want a release on contract
5 claims within that broad definition?

6 A. I'm -- I'm sure they do.

7 Q. All right. And you're prepared to give them that, right?

8 A. Correct.

9 Q. But you didn't make any attempt to value what alter ego
10 claims or tort claims or any other claims would look like,
11 right?

12 A. Correct.

13 Q. Why not?

14 A. Because I thought that it would be really speculative to
15 try to do that, and I think the kind of the claims that are
16 available, not just the debtors' claims, the claims of third
17 parties, which may have individual claims against Ally, in some
18 fashion, as a result of something to do with ResCap, are also
19 being released to try to look at all of those. And I assume --
20 I don't know -- I assume there must be hundreds of them all
21 over the -- all over the United States, to try to get a handle
22 on those. I assume, even if I took the time and had the
23 ability and skill set to put values on all of those, I'm not
24 sure everybody, who was part of the participating creditors or
25 others, would agree with my values, and I think we'd be back

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1 here in Court fighting over my values instead of looking at the
2 confirmation of a Chapter 11 plan.

3 Q. Well, let's be clear. When you say you put a value on it,
4 you certainly would have relied on your team of lawyers at
5 Morrison & Foerster, right?

6 A. Well, I certainly have a lot of confidence and faith in
7 Morrison & Foerster, but I've had a lot of experience looking
8 at claims over the course of those fifty years. I've had lots
9 of presentations from lawyers as to what the range of recovery
10 likely was, and what the range of value for the claim really
11 was. And it's all very interesting, but it's not the same as
12 getting a global settlement or really coming to a firm
13 conclusion.

14 I mean, you can come to a conclusion about all of this, we
15 could have litigated, and it was sort of a binary decision for
16 me early on. We could have litigated all -- every creditor
17 could have been litigated with to find out what the size of
18 their claim was. Ally could have been sued by the creditors'
19 committee under their standing motion. Ally would have
20 defended those actions, private security claims would have
21 sued, everybody would be litigating. We might take four or
22 five years, and at the end of that time we might have
23 perfection, in the sense that we would know what all the
24 allowed claims are and what our recovery is from AFI.

25 The problem, of course, is that the debtor would like to

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1 become administratively insolvent during that process and there
2 would be no distribution to creditors for years to come. It
3 seemed to me to be not an intelligent way to go forward,
4 because I think -- and I'm comforted by the fact that the
5 creditors, in large measure, have overwhelmingly voted in favor
6 of this plan, tells me what we did was the right thing to do.

7 Q. So to back up, you determined, at the beginning, that
8 having an estimate of claims prepared by your lawyers and
9 financial advisors was not going to be something helpful to
10 you, going into the mediation?

11 A. That's correct, because I don't think that Ally was
12 thinking about it in those terms and I don't think that we
13 were. I think my goal was to get as much money as possible
14 from Ally, because obviously the more money you have, the
15 easier to it is for people to coalesce around that.

16 Ally's goal was to pay as little as humanly possible, but
17 to pay an amount just big enough, to the last dollar, that
18 would be sufficient to get all of the creditors to look at that
19 sum of money, look at what was available under -- from
20 distribution on the debtors' estates and say that that
21 combination of dollars was enough for them to satisfy their own
22 individual claims and to not feel too badly about seeing other
23 creditors receive some debt benefits as well.

24 Q. And to be clear, when you were doing that calculus, it was
25 your understanding that the JSNs did not have a lien on any

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1 portion of the Ally contribution, right?

2 A. Well, that -- that was my own view of the world, but of
3 course that's not binding upon the JSNs and we're here,
4 obviously, because you assert a different position. And I
5 thought that we did well in thinking about all of this, in the
6 sense that we provided for the JSNs a full recovery with
7 pre-petition interest and provided a mechanism for the JSNs to
8 assert their claims for post-petition interest.

9 Q. So when you were negotiating the settlement and you were
10 looking out for all of the creditors, it was your thinking that
11 the JSNs did not have a lien on the Ally contribution, right?

12 A. That was my thought, yes.

13 Q. Okay. And you also thought that if, in this phase two
14 trial, the JSNs proved that there is a value to the lien and
15 the Court does an allocation, to the extent that they are
16 oversecured, they'd be entitled to their interest that way,
17 right?

18 A. Yes.

19 Q. Okay. So you would agree with me that the claims that
20 ResCap hold -- held -- holds, until the release is entered,
21 against Ally are assets of ResCap, right?

22 A. Yes.

23 Q. On the liability side of ResCap, people who participated
24 in the mediation were parties who had claims against both
25 ResCap and Ally, right?

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1 A. Some did; not all.

2 Q. Okay. With respect to the people who had claims against
3 ResCap, did you have your lawyers do a litigation analysis on
4 the liability side?

5 A. I'm not quite sure what --

6 THE COURT: I don't understand your question. Would
7 you just --

8 MR. COHEN: Sure.

9 Q. For example, the private securities plaintiffs asserted
10 claims against ResCap and Ally, right?

11 A. Yes.

12 Q. Did you have your lawyers do a litigation analysis to tell
13 you what the strength of those claims were and what the
14 magnitude of the damages may be?

15 A. Oh, yes. I had full presentations, basically, both from
16 my counsel, creditors' committee counsel, sometimes counsel for
17 the individual creditors themselves, and analyzing each other
18 person's claims, the strengths and weaknesses of their claims,
19 and from the debtors' perspective what our affirmative defenses
20 would be and affirmative actions would be with respect to every
21 creditors' claim.

22 Q. So on the liability side, you actually did undertake to do
23 a litigation and exposure analysis, right?

24 A. Well, when you're talking about that, what I learned about
25 was what the strengths and weaknesses were of our case, but I

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1 don't know that anybody ever said the strengths and weaknesses
2 bring us to X dollars as a result of that. That's not what we
3 did. I learned the strengths and weaknesses of people -- of
4 parties' positions and of creditors' claims, but we never put
5 dollar amounts on them.

6 Q. And the dollar amounts were a subject of negotiation in
7 the context of mediation, right?

8 A. Correct.

9 Q. Okay. Would you turn to your witness statement, which is
10 the first document in your binder? And I'd like to direct your
11 attention to paragraph 132 on page 50, please. And let me know
12 when you are there.

13 A. I'm sorry, what paragraph again?

14 Q. Paragraph 132 on page 50, please.

15 A. Yes.

16 Q. All right. In that paragraph you say, "The junior secured
17 noteholders' counsel and advisors attended the mediation, but
18 the principals of the junior secured noteholders made a
19 strategic decision not to participate in the mediation, which
20 resulted in the plan support agreement and thus did not enter
21 into the plan support agreement." Do you see that?

22 A. Yes, I do.

23 Q. You don't have personal knowledge as to why the principals
24 of the junior secured noteholders did or did not attend a
25 mediation, do you?

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1 A. Well, let me -- let me tell you what I know. Judge Peck
2 was the host of the mediation, and he invited to the mediation
3 those whom he invited. I think he would have invited all of
4 the JSN secured noteholders, but I don't think that he was
5 comfortable with the kind of disclosure documents that they
6 wanted, so he chose not to invite them.

7 Q. So it's your testimony that they were not invited to the
8 mediation?

9 A. I think they were invited, but they were invited, as
10 everybody else was, who agreed to maintain the confidentiality
11 of the mediation process and not participate in the trading of
12 debt as a result of that mediation process. I think, as I
13 said, that Judge Peck was not comfortable with the requirements
14 for participation from members of the ad hoc committee, or at
15 least some of them.

16 Q. Did Judge Peck tell you that?

17 A. Yes.

18 Q. And did Judge Peck tell you that the junior secured
19 noteholder principals made a strategic decision not to attend
20 the mediation?

21 A. That's my own conclusion.

22 Q. And that conclusion is based on the conversation with
23 Judge Peck?

24 A. That's correct.

25 Q. Do you know -- have personal knowledge as to why the

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1 principals of the junior secured noteholders did not enter into
2 the plan support agreement?

3 A. No, I do not know why they did not enter into the plan
4 support agreement.

5 Q. They didn't call you and tell you, and you didn't call
6 them and ask them?

7 A. No, and quite frankly, I was surprised and disappointed
8 that they did not, because I thought that for them to get a
9 meaningful recovery we needed to have a confirmation of a
10 Chapter 11 plan. Absent a confirmation of this plan, and the
11 litigation that might ensue as a result of not confirming a
12 plan, I assumed there would be distri -- there would be no
13 effective date, no Ally contribution, the JSNs would be
14 fortunate to recover the full amount of their pre-petition
15 allowed claim at some future date, let alone what they're
16 getting out of this claim. So as I said, I was disappointed
17 that they did not sign up for this plan.

18 MR. COHEN: Thank you. I have no further questions.

19 THE COURT: Thank you, Mr. Cohen.

20 Any other cross-examination?

21 CROSS-EXAMINATION

22 BY MR. SCHAFFER:

23 Q. Mr. Kruger, I think you've heard I'm Eric Schaffer, here
24 for Wells Fargo as collateral agent.

25 A. I have.

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1 Q. I'll try and move through this as expeditiously as I can.
2 Are you familiar with Wells Fargo's role as collateral agent
3 with regard to the AFI revolver and the junior secured notes?

4 A. I've been informed that that's your role.

5 Q. Yes. Thank you for the approbation.

6 Are you aware that in connection with the AFI revolver,
7 Wells Fargo has a first priority lien?

8 A. I am not familiar with that.

9 Q. Okay. Do you know whether Wells Fargo is a secured
10 creditor?

11 A. No, I do not know anything about that.

12 Q. Do you have an understanding that, from time to time,
13 Wells Fargo released liens on certain collateral?

14 A. I've heard about that.

15 Q. Okay. Do you understand that for purposes of such
16 releases, the various documents, the revolver, the security
17 agreement, the intercreditor, all provided the rules of the
18 road for when and how things should be released?

19 A. I'm not familiar with that.

20 Q. Do you know whether Wells Fargo received officer
21 certificates or opinions of counsel with regard to any of the
22 lien releases?

23 A. I have no idea.

24 THE COURT: This is all very interesting. Do you
25 really think you're going to get any competent evidence from --

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1 go ahead.

2 MR. SCHAFFER: Your Honor, I promise to move as
3 quickly as I can.

4 THE COURT: You've been asking a handful of questions
5 but I -- you know.

6 MR. SCHAFFER: Well, I appreciate the Court permitting
7 me to ask a few more.

8 THE COURT: Go ahead. Just go ahead.

9 Q. Are you aware that Wells Fargo has noted in its objection
10 that it's been threatened with suit by the JSNs?

11 A. I've heard about that as well.

12 Q. And you understand that that would be somehow connected to
13 the release of liens in connection with the junior secured
14 notes?

15 THE COURT: I'm going to sustain my own objection to
16 this, okay? This is not -- look, let's move on, okay? If you
17 have questions about what this witness knows, about what ResCap
18 did with respect to Wells Fargo as collateral agent, go ahead
19 and ask him. Otherwise stop wasting my time.

20 Q. Mr. Kruger, Mr. Lee, in his opening, said he did not
21 believe the JSNs could have any kind of legitimate claim
22 against Wells Fargo, so there should be ultimately no
23 indemnification claim against the debtors. Do you have any
24 knowledge about that?

25 A. No.

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1 Q. Have the debtors made any investigation of claims that
2 might be asserted by the JSNs against Wells Fargo?

3 A. No, not that I know of.

4 Q. Do you have any basis to believe that they wouldn't sue
5 Wells Fargo?

6 MR. KERR: Objection, Your Honor.

7 THE COURT: Sustained.

8 Q. How do you evaluate Wells Fargo's indemnification claim
9 against the debtors?

10 A. I have not done so.

11 Q. Do you know if anyone has done so for the debtors?

12 A. Not that I'm aware of.

13 Q. Are the debtors prepared to reserve an amount sufficient
14 to ensure that whatever indemnification claim Wells Fargo might
15 have, it will be paid?

16 MR. KERR: Objection.

17 THE COURT: Sustained.

18 Q. Are you familiar with the releases that are granted under
19 the plan?

20 A. Yes.

21 Q. Is it your understanding that the releases would extend to
22 any claims that Wells Fargo might have against directors and
23 officers of ResCap?

24 A. It's probably a lawyer's answer, but I believe that that's
25 correct.

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1 Q. Do you know whether the proposed releases would also
2 extend to any claims that Wells Fargo might have against Ally
3 for indemnification?

4 THE COURT: You know, you can get a legal -- you know,
5 at some point a legal issue may be relevant, but not from this
6 witness. He's not testifying as an expert. He's testifying --
7 well, he's testifying as a CRO. He may be very expert in what
8 he does, but I'm going to preclude your further questions about
9 what the legal effect of the release in the plan is.

10 MR. SCHAFFER: I understand, Your Honor.

11 Q. Mr. Kruger, is there any kind of insurance, D&O insurance
12 or otherwise, that would be available to Wells Fargo under the
13 plan?

14 A. I have no -- I have no idea.

15 Q. I think you testified earlier that the debtors agreed to
16 seek confirmation of the plan, regardless of the outcome of the
17 phase one litigation?

18 A. That's correct.

19 Q. So if the JSNs prove to be unsecured, you'd have no
20 problem --

21 THE COURT: Undersecured, you mean?

22 MR. SCHAFFER: Thank you, Your Honor.

23 Q. If they prove to be oversecured, you would have no problem
24 with them getting paid in full with post-petition interest?

25 A. Whatever the amount of their oversecured position was, as

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1 I said, God bless them.

2 Q. Do you understand that if they don't recover all of that
3 and they sue us, that Wells Fargo ends up with --

4 THE COURT: Okay, your examination is over. Go sit
5 down. You're not heeding the directions that I've given, okay?
6 I made it clear before lunch, when I had counsel at the bench,
7 that I intend to keep a tight rein on the time and the
8 questions and cross-examination that's asked of witnesses. I
9 tried to make it clear. I've given you some leeway in your
10 examination. I believe you're abusing it, and your examination
11 is over.

12 Anybody else wish to examine -- any redirect of Mr.
13 Kruger?

14 MR. KERR: Your Honor, we have no redirect.

15 THE COURT: All right. Thank you you're excused, Mr.
16 Kruger.

17 THE WITNESS: Thank you.

18 THE COURT: We have to deal with this witness
19 statement.

20 THE WITNESS: I'm not quite sure what to do with the
21 binders.

22 THE COURT: Just leave them.

23 Go ahead, Mr. --

24 MR. COHEN: Your Honor, we object to the introduction
25 of paragraph 132 of Mr. Kruger's witness statement into

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1 evidence. We think it is a lack of personal knowledge, hearsay
2 and given the Court's earlier comments about participation at
3 the mediation, we would also object on relevance.

4 THE COURT: Sustained. That's the only paragraph you
5 have a problem with?

6 MR. COHEN: That is the only paragraph.

7 MR. KERR: Sorry, Your Honor. I'm just unclear --

8 THE COURT: You can leave it there. It's just I'm
9 sustaining the objection to it.

10 MR. KERR: Right, but subject to that, Mr. Kruger's
11 testimony has been admitted?

12 THE COURT: Oh, absolutely.

13 MR. KERR: Okay, great.

14 THE COURT: Absolutely.

15 MR. KERR: Thanks.

16 MR. COHEN: Thank you, Your Honor.

17 THE COURT: It's just one paragraph of the direct --

18 MR. COHEN: Correct --

19 THE COURT: -- testimony.

20 MR. COHEN: Correct.

21 THE COURT: All right. So --

22 MR. KERR: Your Honor, do you need us to refile it
23 with the delete --

24 THE COURT: Mr. Cohen, it's not -- I know I'm
25 sustaining the objection to the paragraph. I mean, you read a

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1 transcript, somebody asks a question, and an objection is
2 raised and I sustain an objection, it's still in the
3 transcript.

4 MR. COHEN: That's fine, Your Honor.

5 THE COURT: Okay. So --

6 MR. COHEN: We don't need a redacted version.

7 THE COURT: Okay. All right.

8 MR. COHEN: You have enough paper.

9 THE COURT: So, all right. The direct testimony of
10 Lewis Kruger, which has been identified at ECF docket number
11 5709, is in evidence, except for paragraph 132, as to which
12 I've sustained the objection.
13 (Direct testimony of Lewis Kruger, except for paragraph 132,
14 was hereby received into evidence as Plan Proponents' Exhibit,
15 as of this date.)

16 MR. KERR: Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 MR. COHEN: Your Honor, could we take a short break
19 before the next witness?

20 THE COURT: Absolutely.

21 MR. COHEN: Thank you.

22 THE COURT: So let's -- we'll take this as our
23 afternoon recess. We'll take a fifteen-minute recess.
24 Okay?

25 MR. COHEN: Thank you, Your Honor.

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1 THE COURT: All right. Thank you very much.

2 Who is the next witness?

3 MR. KERR: Your Honor, Mr. Thompson is the next
4 witness. I will tell you that we worked very, very, very hard
5 to get our witnesses here and lined up. However, we were given
6 cross-examination times of three hours for Mr. Kruger --

7 THE COURT: Be thankful that it wasn't three hours.

8 MR. KERR: I am, Your Honor, but I'm just telling Your
9 Honor that I may run out of witnesses --

10 THE COURT: Blame Mr. Cohen.

11 MR. KERR: Yeah, well --

12 MR. COHEN: We gave our estimates before the bench
13 conference before lunch.

14 MR. KERR: So Your Honor, I'm doing my best to have
15 everybody here, but I'm --

16 THE COURT: I'm glad people got the message then.

17 MR. COHEN: It was delivered.

18 THE COURT: All right. Fifteen-minute recess. If you
19 run out of witnesses, everybody will get a little extra time.
20 Okay?

21 (Recess from 3:09 p.m. until 3:31 p.m.)

22 THE CLERK: All rise.

23 THE COURT: Please be seated.

24 MR. LAWRENCE: Good afternoon, Your Honor; Alex
25 Lawrence on behalf the debtors.

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1 Your honor, in support of the joint Chapter 11 plan
2 proposed by the debtors and the official committee of unsecured
3 creditors, the debtors offer the direct testimony of William
4 Thompson, dated November 12, 2013, which was filed as docket
5 entry number 5713.

6 If Mr. Thompson was called to testify, he would
7 testify to what is in his written direct testimony.

8 We therefore offer his written direct testimony in
9 factual support of the plan confirmation in these consolidated
10 proceedings.

11 THE COURT: Mr. Cohen?

12 MR. COHEN: No objection, Your Honor.

13 THE COURT: All right. The direct testimony of
14 William Thompson, which is ECF number 5713 is in evidence.
15 (Direct testimony of William Thompson was hereby received into
16 evidence as Plan Proponents' Exhibit as of this date.)

17 THE COURT: Are you going to cross-examine?

18 MR. COHEN: We are not, Your Honor.

19 THE COURT: Okay. Does anybody wish to cross-examine
20 Mr. Thompson?

21 Are there any exhibits that you wish to offer?

22 MR. LAWRENCE: There are a handful, Your Honor.

23 THE COURT: All right. Give me those.

24 MR. LAWRENCE: They are -- we offer as plan
25 proponents' exhibits, Exhibit numbers 648, 649, 650, 651, 678,

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1 851, 924, 925 and 926.

2 THE COURT: Are there any objections to those
3 exhibits?

4 MR. COHEN: Your Honor, if I may have a minute.

5 THE COURT: Yes, absolutely, sure.

6 (Pause)

7 MR. COHEN: No objection, Your Honor.

8 THE COURT: All right. Exhibit 648, 649, 650, 651,
9 678, 851, 924, 925 and 926 are admitted in evidence.
10 (Exhibits regarding Mr. Thompson's testimony were hereby
11 received into evidence as Plan Proponents' Exhibits 648, 649,
12 650, 651, 678, 851, 924, 925 and 926, as of this date.)

13 MR. LAWRENCE: Thank you, Your Honor.

14 THE COURT: Thank you very much.

15 MR. KERR: Your Honor, we'll get you a copy of his
16 direct in a moment.

17 THE COURT: That's fine.

18 MR. KERR: Okay, thank you.

19 THE COURT: Okay.

20 MR. KERR: One moment, Your Honor.

21 THE COURT: Absolutely.

22 MR. KERR: Your Honor, Charles Kerr on behalf of
23 debtors. On behalf of the debtors and official committee of
24 unsecured creditors, we'd like to offer the direct testimony of
25 Martin Blumentritt. It was filed in ECF as 5698. It's dated

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1 November 12, 2013.

2 If Mr. Blumentritt was asked these questions on the
3 stand, he would testify as set forth in his written testimony.

4 THE COURT: Any objections?

5 MR. COHEN: No objection, and we do not intend to
6 cross.

7 THE COURT: All right.

8 (Direct testimony of Martin Blumentritt was hereby received
9 into evidence as Plan Proponents' Exhibit as of this date.)

10 THE COURT: Any exhibits, Mr. Kerr?

11 MR. KERR: Your Honor, we do have exhibits. However,
12 there is a long series of insurance policies, and what I would
13 suggest is that we do what we're doing with Mr. Lipps, prepare
14 a list, I'll make sure Mr. Cohen gets it tonight, we'll go
15 through it, and I have them here if you'd like to have them,
16 Your Honor.

17 THE COURT: Oh, I think I could probably live without
18 them for now.

19 MR. COHEN: That's fine with us.

20 MR. KERR: We'll take care of that housekeeping --

21 THE COURT: Okay.

22 MR. KERR: -- Your Honor.

23 THE COURT: All right. I think that's a good way to
24 proceed. You'll prepare a written list and get -- see if you
25 can get agreement on it and --

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1 MR. KERR: Right.

2 THE COURT: -- I'll deal with any problems. Thank you
3 very much.

4 MR. KERR: No problem. Let me just move these out of
5 the way.

6 THE COURT: Okay.

7 MR. KERR: One moment, Your Honor.

8 THE COURT: Yes, that's fine. I keep checking them
9 off your list. We've got a lot of people.

10 Mr. Cohen, do I have your order of witnesses yet?

11 MR. COHEN: Yes. We served it -- yeah, it was filed
12 before noon today.

13 THE COURT: Okay. That's -- I wouldn't have seen it.
14 Okay.

15 MR. COHEN: Sorry, Your Honor, it was exchanged. It
16 was exchanged.

17 THE COURT: So if you file it tonight on ECF --

18 MR. COHEN: We'll be happy to.

19 THE COURT: -- I would appreciate it. And then if I
20 don't see it there, you'll tell me what the number is and I'll
21 print it out, because I've been trying to keep track of
22 witnesses.

23 MR. COHEN: That'll be fine. We will file those
24 tonight.

25 THE COURT: That's fine.

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1 Go ahead, Mr. Kerr.

2 MR. KERR: Your Honor, Charles Kerr on behalf of the
3 debtors.

4 In support of the joint Chapter 11 plan proposed by
5 the debtors and the official committee of unsecured creditors,
6 the debtors offer the direct testimony of Mark A. Renzi, dated
7 November 12, 2013, which was filed as docket entry number 5709.

8 If Mr. Renzi was called to testify, he would testify
9 to what is in his direct written testimony. We offer his
10 direct written testimony in support of the consolidated
11 proceedings and plan confirmation.

12 THE COURT: All right. Mr. Cohen?

13 MR. COHEN: Ms. Miller will be handling --

14 THE COURT: Ms. Miller?

15 MR. COHEN: -- this witness.

16 MS. MILLER: We have no objections.

17 THE COURT: All right. So the direct testimony of
18 Mark A. Renzi, which is at ECF number 5709, is in evidence.
19 (Direct testimony of Mark A. Renzi was hereby received into
20 evidence as Plan Proponents' Exhibit as of this date.)

21 THE COURT: I assume you're cross-examining Mr. Renzi?

22 MS. MILLER: I am.

23 THE COURT: Okay. All right.

24 MR. KERR: And we have no exhibits to offer with Mr.
25 Renzi.

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1 THE COURT: Okay. All right.

2 MR. KERR: So I'm going to bring up a copy of his
3 direct.

4 THE COURT: Thank you.

5 Mr. Renzi, if you would come up and be sworn.

6 If you would just go up and raise your right hand,
7 you'll be sworn. Okay?

8 (Witness sworn)

9 THE COURT: Okay. Please have a seat. Does somebody
10 have some water for Mr. Renzi? You have your water.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Yes, that's good.

13 CROSS-EXAMINATION

14 BY MS. MILLER:

15 Q. For the record, Tara Miller of Milbank, Tweed, Hadley &
16 McCloy, on behalf of the JSNs. Good afternoon, Mr. Renzi.

17 A. Good afternoon.

18 Q. Mr. Renzi, you became actively engaged in the ResCap
19 matter in November 2011, right?

20 A. That's correct.

21 Q. And was sometime in early 2012 you were tasked with
22 understanding the nature of ResCap's intercompany balances,
23 right?

24 A. Among other things, correct.

25 Q. And you were heavily involved in the process, at FTI, of

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1 understanding really what was behind the intercompany balances,
2 right?

3 A. I would say the focus of the -- my work was not
4 intercompany balances. It was other things, but that was one
5 of the issues that was being addressed.

6 Q. And you knew, based on your prior experience, that
7 intercompany debt transactions could be recharacterized in a
8 bankruptcy proceeding, right?

9 A. That's my understanding.

10 Q. And you understood also, based on discussions that you
11 had, the factors that would be relevant in a review of
12 intercompanies, right?

13 A. I had an understanding, along with advice from counsel.

14 THE COURT: I'm sorry, I didn't hear the last part.

15 THE WITNESS: Along with advice from counsel.

16 THE COURT: All right.

17 Q. I'd like you, Mr. Renzi, to look at Exhibit DX-AXK.

18 A. Is it only on screen or is it in a --

19 Q. No, it's in the binder --

20 THE COURT: It's on the second tab in the binder,
21 yeah.

22 Q. -- in front of you.

23 A. Thank you very much.

24 THE COURT: Second tab.

25 MS. MILLER: DX-AXK.

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1 THE COURT: Oh, it's not the second tab. I'm sorry.
2 It's midway through the binder.

3 MS. MILLER: Yeah, it's after the disclosure
4 statement --

5 THE COURT: Yeah, I got it.

6 MS. MILLER: -- which is the very large one.

7 A. I'm there.

8 Q. Okay. And Mr. Renzi, looking down in this exhibit past
9 the top e-mail, which you're not on, the second e-mail in the
10 chain is an e-mail from you to Barbara Westman and Cathy
11 Donzilla, copying a number of other people, dated April 20,
12 2012, right?

13 A. Yes, that's correct.

14 Q. And in this e-mail you indicate that you collected
15 questions from MoFo, K&E, Evercore and Ally, and that you
16 listed them in a pretty extensive e-mail that you sent over to
17 Ms. Westman and to Ms. Donzilla, right?

18 A. Yes.

19 Q. And these questions were specifically targeted toward the
20 factors that you and counsel thought were relevant to the
21 recharacterization analysis, right?

22 MR. KERR: Objection, Your Honor.

23 THE COURT: Overruled.

24 A. We thought that this e-mail was an extensive and diligent
25 request list for information regarding intercompany balances.

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1 Q. And you thought you were being as diligent as you possibly
2 could be in collecting, in your collection of information
3 related to the intercompany balances before the petition date,
4 right?

5 A. Yes, we took this task very seriously.

6 Q. And you wanted to make sure that both you and MoFo had as
7 much information as possible, right?

8 A. Correct.

9 Q. And you relied on ResCap's employees to provide you
10 accurate information about the intercompanies, right?

11 A. I did.

12 Q. And specifically you relied on Ms. Westman and Ms.
13 Donzilla and people who were working at their direction at
14 ResCap, right?

15 A. Yes.

16 Q. And it's your belief that the company gave you as much
17 information as it had in response to your requests, right?

18 A. That's my belief.

19 Q. And you also believed that the information that they gave
20 you was accurate, right?

21 A. I believe to the extent that they could answer it, yes, I
22 believe it's accurate.

23 Q. And Mr. Renzi, you had a very limited involvement in the
24 debtors' preparation of the SOALs, right?

25 A. Correct.

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1 Q. But you did review specifically how the intercompany
2 claims were reflected on the SOALs, isn't that right?

3 A. I looked at some of the schedules along with the
4 intercompany schedules. So it wasn't just that schedule.
5 There were other things, but I wasn't primarily focused on the
6 SOFA and SOALs.

7 Q. But you did specifically look at the schedule that listed
8 the intercompany balances?

9 A. Correct.

10 Q. And you mentioned that you weren't primarily responsible,
11 your colleague Mr. Talrico (ph.) was taking the primary
12 responsibility in putting together the schedules, right?

13 A. That's correct.

14 Q. And after you reviewed the schedules on which the
15 intercompany balances appeared, you didn't give Mr. Talrico any
16 comments, right?

17 A. I don't recall.

18 Q. Was it your belief that the intercompany balances were
19 being reflected on the SOALs the way the company wanted them to
20 be reflected?

21 MR. KERR: Objection.

22 THE COURT: Overruled.

23 A. It is my belief; I think that the company signed off on
24 the way they were reflected in the SOFA and SOALs.

25 Q. You don't recall providing Mr. Talrico with any specific

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1 comments, right?

2 THE COURT: Asked and answered.

3 Q. If you thought that they were misrepresented, you would
4 have told Mr. Talrico, right?

5 A. Yes.

6 Q. Mr. Renzi, I'd like you to turn now to document, in your
7 binder, DX-APA.

8 A. Is it further back?

9 Q. No, it's very close to the beginning, probably four tabs
10 in. It is the third tab in.

11 Mr. Renzi, is this a document you've seen before?

12 A. Yes.

13 Q. And this is a presentation that FTI put together regarding
14 the ResCap intercompany transactions, right?

15 A. And others, correct.

16 Q. And this presentation is dated April 4, 2013, right?

17 A. It is dated April 4, 2013.

18 Q. And if you turn to page 6 of the deck, looking at the
19 first intercompany balance, the intercompany between ResCap LLC
20 and GMAC Residential Holding in the net claim amount of 3.334
21 million dollars, the first bullet states that the balance
22 generally arose from borrowing under loan agreements, do you
23 see that?

24 A. Ms. Miller, I think it's 3,334 million, not 3 point --

25 THE COURT: 3.334 billion dollars?

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1 MS. MILLER: Right, yes.

2 THE WITNESS: Correct, Your Honor.

3 Q. I keep my charts in billions, but you're right. This one
4 is misleadingly in millions.

5 THE COURT: It's not misleading. It's what it is, but
6 it's billions.

7 MS. MILLER: It's misleading only in my brain.

8 Q. It is 3,334 million dollars is the net claim amount,
9 right?

10 A. Correct.

11 Q. And do you know who actually put together this PowerPoint?

12 A. It was a combination of FTI, the company,
13 discussions with the company, and discussions with counsel.

14 Q. And do you know who did the actual drafting penmanship?

15 A. I would say it's a collective effort.

16 Q. Do you know who attributed the labels to various columns?

17 A. I can't remember specifically, but I know it was one of
18 the three groups. This was obviously something that we wanted
19 to present publicly or out to a broader group, and we made sure
20 that we presented things as accurately as we possibly could.

21 Q. Okay. And the first bullet under transaction number 1
22 says that the balance generally arose from borrowings under a
23 loan agreement between ResCap and Res Holdings. Do you see
24 that?

25 A. I do.

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1 Q. And if you look down to intercompany two, which is the
2 intercompany between Residential Funding Company, RFC, and
3 ResCap, in the amount of -- in the claim amount of 1,955
4 million dollars, the first bullet says that "The balance
5 generally arose out of the operation of the company's
6 centralized cash management system as RFC generated cash. That
7 cash would be swept upstream to ResCap. Balance changed
8 frequently." Do you see that?

9 A. I do.

10 Q. Do you believe that's an accurate description of how
11 intercompany balance number 2 arose?

12 A. I do.

13 Q. And you believe also that intercompany balance number 3,
14 which is the intercompany between Homecomings Financial, LLC
15 and RFC, in the amount of 1,252 million dollars also generally
16 arose out of the operation of the company's centralized cash
17 management system, right?

18 A. Yes, I do.

19 Q. And looking at intercompany balance number 4, which is the
20 intercompany balance between a Passive Asset Transactions, LLC
21 and GMAC Mortgage LLC in the amount of 697 million dollars,
22 that balance also generally arose out of the operation of the
23 company's centralized cash management system, right?

24 A. I think the answer to this one is also yes, but I think in
25 the context of these balances they were continuously created,

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1 and to the extent that monies was being swept around the system
2 and going from A to B to C, there may be -- the balances kept
3 getting inflated, in my understanding.

4 So yes, one of the predominant reasons is a centralized
5 cash management system, but I also think that there is some
6 context that needs to be, you know, presented in terms of why
7 these balances were at the level that they are.

8 Q. When you say inflated, you mean that the balances
9 increased as a result of cash moving throughout the system,
10 right?

11 A. Yes, cash did move. But to the extent that cash was
12 ultimately going to one debtor versus another debtor, the --
13 you may have multiple balances being created that were not I
14 would call, cleaned up.

15 So, for example, if A wanted to lend money to C, it may
16 have lent it from A to B to C, and then subsequent balances
17 were being created when the intent was really just to get money
18 from A to C, so --

19 Q. Is that a hypothetical, or are you describing something
20 real at ResCap?

21 A. That's my understanding.

22 Q. And what is that understanding based on?

23 A. Discussions with management.

24 Q. Can you give me an example of intercompany balances that
25 you're describing that are reflected on the intercompany

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1 balance chart?

2 A. I think that's what's been represented in my direct
3 testimony, is that these are a combination of tens of thousands
4 of transactions. So I probably could not isolate that without
5 doing a tremendous amount of personal diligence in terms of
6 seeing a specific example for you.

7 Q. And you never personally diligenced any of the
8 transactions underlying these balances, right?

9 A. No.

10 Q. And that's something that the company would have done,
11 right?

12 MR. KERR: Objection, Your Honor.

13 THE COURT: Sustained.

14 A. I believe the company --

15 THE COURT: Stop.

16 Q. You can't answer.

17 A. Sorry.

18 Q. So looking at all of the intercompany balances that are
19 listed in this exhibit, you can't give me one specific example
20 of the type of movement that you're discussing?

21 A. Not here, no.

22 Q. Well, looking down to intercompany balance number 5, the
23 intercompany balance between Executive Trustee Services LLC and
24 GMACM, in a net claim amount of 265 million dollars, you agree
25 also that that balance generally arose out of the operation of

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1 the company's centralized cash management system, right?

2 A. Correct.

3 Q. And the same would be true also for intercompany balance
4 number 6 on page 8 of the deck between RFC and RFC Asset
5 Holdings II, LLC, in the net claim amount of 232 million
6 dollars, right?

7 A. It also goes on to say "Balance primarily attributed to
8 settlement of taxes under the tax sharing agreement".

9 Q. And do you see that as contradicting the first sentence
10 which says that the balance generally arose out of the
11 operation of the company's centralized cash management system,
12 or giving more information about that?

13 A. I can't tell which one of the two sentences to weigh more.

14 Q. And Mr. Renzi, you have experience with other debtors with
15 cash management systems, right?

16 A. I do.

17 Q. And you've never been involved in a case where an
18 intercompany balance generated by a cash management system has
19 been recharacterized as equity, right?

20 A. I don't think that the situations were comparable, the way
21 you're stating it.

22 Q. But you've never seen intercompany balances that were
23 generated as a result of the functioning of the centralized
24 cash management system recharacterized as equity, right?

25 A. I don't think -- I'm not trying to be argumentative; I

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1 just don't think they're comparable, because in prior examples
2 intercompany balances weren't intercompany balances; they were
3 formal documents that were intercompany notes that had maturity
4 dates, interest payments, interest rates, et cetera.

5 Q. Mr. Renzi, have you ever been involved in a Chapter 11
6 proceeding where an intercompany balance that arose out of the
7 functioning of a centralized cash management system was
8 recharacterized as equity?

9 A. I can't recall. I don't think so.

10 Q. Looking back at page 8, at intercompany balance number 6
11 in Exhibit DX-APA, and looking the a the last sentence that you
12 mentioned, which states that the balance -- the last sentence
13 of the first bullet, which states that the balance primarily
14 attributable to settlement of taxes under the tax sharing
15 agreement -- does that sentence impute debt or equity to you?

16 MR. KERR: Objection.

17 THE COURT: I don't understand your question, Ms.
18 Miller.

19 Q. Does that sound like -- let me restate it.

20 Mr. Renzi, does the settlement of taxes under a tax
21 sharing agreement sound like it would be a debt transaction or
22 an equity transaction?

23 MR. KERR: Objection, Your Honor.

24 THE COURT: I'm going to overrule it. If you can
25 answer it --

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1 A. I don't know the answer to that question.

2 Q. I'd like you to turn now to Exhibit DX-AWR, which is the
3 notice of filing of the corrected solicitation version of the
4 disclosure statement in the joint Chapter 11 plan, attaching
5 the disclosure statement and all exhibits.

6 Mr. Renzi, have you seen this document before?

7 A. Yes, I have.

8 Q. If you could turn to page 52 of 201 on the top, or page 42
9 on the bottom of the document. Looking down to the last
10 paragraph, Romanette iii states that "the inability to reach
11 consensual agreement with numerous creditor constituencies
12 absent consensual resolution of the intercompany balances and
13 inextricably related issues". Do you know which creditor
14 constituency insisted on settlement of the intercompany claims
15 at zero?

16 THE WITNESS: Your Honor, I think a lot of this was
17 under mediation, but --

18 THE COURT: Don't --

19 MR. KERR: I would object, Your Honor. It calls for
20 disclosed stuff that happened in the mediation.

21 THE COURT: If it calls for the disclosure of what was
22 discussed in the mediation, I will sustain that.

23 MS. MILLER: I believe at Mr. Renzi's deposition --

24 THE COURT: I don't care what he said at his
25 deposition. What I care about is when it was discussed, okay?

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1 I'm not precluding you from questioning on the issue. All I'm
2 going to say is if the discussion occurred as part of the
3 mediation and an objection is made, I'll sustain it. Maybe you
4 could inquire in another fashion to get to the same point. I'm
5 not closing out this line of questioning, because the statement
6 is in a public document, the disclosure statement.

7 Q. Mr. Renzi, it's your understanding that it was the
8 unsecured creditors' committee then insisted on the settlement
9 of the intercompany claims at zero in this case, right?

10 A. I think that this is a consensual plan and that when we
11 reached a global settlement for which essentially is global
12 peace, that that was one of the components of the plan.

13 THE COURT: Outside of the mediation, did anyone tell
14 you, in words or in substance, that the creditors' committee
15 insisted on setting the intercompany balance issue at zero?

16 THE WITNESS: I think it was discussed. I mean, one
17 of the items that we've considered in the diligent process
18 we've gone through is --

19 THE COURT: But my question is specific, but I'm
20 excluding what was discussed during the mediation, all right --
21 excluding what happened in the mediation, did anyone tell you,
22 in words or in substance, that the creditors' committee
23 insisted on settling the intercompany balance issue at zero?

24 THE WITNESS: I think they believed it was reasonable.
25 So I'm not sure the word insisted, I don't think -- I can't

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1 remember if they insisted, but I think they thought it was
2 reasonable.

3 THE COURT: Go ahead, Ms. Miller.

4 Q. When you say "they", you're referring to the unsecured
5 creditors' committee, correct?

6 A. Correct.

7 Q. Mr. Renzi, you never valued potential claims that ResCap
8 had against Ally, right?

9 A. Correct.

10 Q. And that's because you were never asked to do that
11 analysis, right?

12 A. I was not asked to do that analysis.

13 Q. And it's not because you couldn't have done the analysis,
14 right?

15 A. FTI is a very large firm. I'm sure, if need be, we could
16 have. And --

17 Q. And you weren't asked to -- you weren't asked to do a
18 valuation of claims pre-petition, right?

19 THE COURT: I'm sorry; I don't understand your
20 question.

21 MS. MILLER: Sorry.

22 Q. You weren't asked to do a valuation of potential claims
23 that ResCap could assert against Ally or that third parties
24 could assert against ResCap pre-petition, right?

25 A. Correct.

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1 Q. And you also weren't asked to do a valuation during the
2 mediation, right?

3 MR. KERR: Objection.

4

5

6 **start 1:37:10**

7 THE COURT: I'm going to let him answer this one yes
8 or no.

9 MR. KERR: Okay.

10 THE COURT: Can you answer that yes or no.

11 THE WITNESS: Do you mind just one more time?

12 BY MS. MILLER:

13 Q. Yeah. You weren't asked to do a valuation of potential
14 claims that ResCap could assert against Ally or the third
15 parties could assert against Ally during the mediation, right?

16 A. That's correct.

17 Q. And you also weren't asked to do a valuation or an
18 allocation after the global settlement was struck, right?

19 A. I was not asked to redo the global settlement, no,
20 correct. I was not asked to redo the global settlement.

21 THE COURT: That wasn't the question. Listen
22 carefully again, okay?

23 THE WITNESS: I'm sorry.

24 BY MS. MILLER:

25 Q. You weren't asked to do an allocation of the global

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1 settlement amount --

2 A. I'm sorry. That --

3 Q. -- among claims after the global settlement was struck,
4 right?

5 A. That's correct.

6 Q. And the plan allocates a settlement among certain debtors,
7 right?

8 A. Yes.

9 Q. Sorry. I think I misspoke, but if you understood.

10 A. Maybe if you could clarify it, that would be great.

11 Q. Okay. Under the plan, the Ally contribution is allocated
12 among certain debtors, right?

13 A. Correct.

14 Q. And were you involved in developing that allocation?

15 A. That allocation occurred during the mediation.

16 Q. And the plan also -- in addition to allocating the
17 settlement, also contemplates where certain creditors' claims
18 will be allowed; is that right?

19 A. That's correct.

20 Q. But at no time did you try to allocate the global
21 settlement payment by claim?

22 A. No.

23 Q. Mr. Renzi, you prepared the debtors' liquidation analysis,
24 right?

25 A. I did, and others at my direction.

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1 Q. And you've been designated as the debtors' corporate
2 representative on the liquidation analysis, right?

3 A. Correct.

4 Q. And in the debtors' liquidation analysis, which is exhibit
5 8 to Exhibit DX-AWR --

6 THE COURT: At the top, there are page number of --

7 MS. MILLER: We flagged the exhibits that I thought
8 might be used.

9 THE WITNESS: Oh, got it. You said Exhibit 8?

10 MS. MILLER: It's Exhibit 8. It's --

11 THE COURT: All right. I got it.

12 MS. MILLER: -- page 33 of 159, probably in the second
13 or third run-through, the numbers in the filing.

14 THE COURT: I see the flags.

15 THE WITNESS: That makes it easier than the
16 deposition.

17 BY MS. MILLER:

18 Q. Yes, it does. I learned.

19 And in the debtors' liquidation analysis, you didn't
20 include any value for claims against Ally, right?

21 A. No, I did not.

22 Q. But you're not suggesting that those claims have no value,
23 right?

24 A. No, I'm not suggesting that.

25 Q. And you're not giving an opinion here today on the value

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1 of any claim against Ally, right?

2 A. I am -- in the liquidation analysis, no.

3 Q. And you didn't include a value for the Ally claims because
4 you believed that it was clear that Ally would not settle
5 without a broad release from the debtors and the third parties,
6 right?

7 A. Well, the assumption was used in the context of a
8 liquidation analysis, and what I believed to be the case is to
9 come up with a new number that was different than what was part
10 of the global settlement. It would be very difficult given the
11 context of what Mr. Carpenter has testified to and what Mr.
12 Kruger has testified to, that it would be very difficult to
13 come up with what that amount would be given the extent of
14 litigation that I thought would occur and the amount of
15 additional claims that may be asserted, so that is correct.

16 Q. And in fact, in the liquidation analysis itself, you state
17 that the outcome of any litigation against Ally would be highly
18 speculative and dependent on uncertain variables, right?

19 A. Yes, correct.

20 Q. If the RMBS claims weren't settled, recovery on those
21 claims would also be speculative and subject to uncertain
22 variables, right?

23 A. Well, my understanding is that the RMBS claims were
24 asserted at a much larger amount than what was presented in the
25 global settlement so --

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1 THE COURT: I don't understand your answer.

2 MS. MILLER: Right. Let me reask my question,
3 maybe --

4 THE COURT: Go ahead.

5 BY MS. MILLER:

6 Q. In the absence of a settlement of the RMBS claims, it
7 would be speculative and those claims would also be speculative
8 and subject to uncertain variables, right?

9 A. Yes.

10 Q. You included a value for the RMBS claims in the
11 liquidation analysis, right?

12 A. I did.

13 Q. And in fact, in the high recovery scenario, you valued
14 them at their global settlement value, right?

15 A. For ease of comparison, that's correct.

16 Q. And you believe that was a reasonable assumption, right?

17 A. I did.

18 Q. And Mr. Renzi, in a liquidation analysis, the RMBS
19 claimants would keep their claims against Ally, right?

20 A. That is my understanding, yes, correct.

21 Q. Because Ally can't get a third-party release in a
22 liquidation analysis, right?

23 A. Correct.

24 Q. And Mr. Renzi, in the absence of a global settlement, the
25 monoline claims would also be speculative and subject to

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1 uncertain variables, right?

2 A. I wouldn't say it like that, but yes, they would be
3 subject to certain variables, and I think they would try to
4 assert a larger claim that was presented in the global
5 settlement.

6 Q. And you included a value for the monoline claims also in
7 your liquidation analysis, didn't you?

8 A. Yes, that's correct.

9 Q. And you thought that that was also a perfectly reasonable
10 thing to do, right?

11 A. Well, we did a range, so we thought that the range was
12 helpful for the purposes of the liquidation analysis.

13 Q. And in the high recovery scenario, the monolines are
14 valued at their global settlement value, right?

15 A. Correct.

16 Q. And in the low recovery scenario, they're actually given a
17 higher value than under the global settlement, right?

18 A. I would say a higher claim, not higher value, but that's
19 fine.

20 Q. And you believe that both of those were reasonable, right?

21 A. I did.

22 Q. And in a liquidation analysis, the monolines would also be
23 keeping their claims against Ally, right?

24 A. That's correct.

25 Q. And under your liquidation analysis, Ally is not

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1 contributing anything?

2 A. That is correct, Ally is not contributing. The 2.1
3 billion dollar settlement, my understanding is for global
4 peace, in the context of this case. It's broader than that.

5 Q. Two billion dollars would be a bargain for that.

6 A. That would be very cheap for the world, but --

7 Q. Right. And Mr. Renzi, while you were drafting the
8 liquidation analysis, you talked about including additional
9 scenarios that would include a recovery from Ally, right?

10 A. We did.

11 Q. And you even ran some of those scenarios, right?

12 A. Well, I think the context of doing the liquidation
13 analysis is important. One of the things that we're dealing
14 with is in a liquidation where it's absent, broad, third-party
15 releases, the global settlement, it's difficult to figure out
16 because Ally and Mr. Carpenter said, and I think they've been
17 on record, that they would fight -- for an extended period of
18 time, there would be extended litigation over claims, over --
19 and that could go on for an extended period of time. And in my
20 opinion, the company would become administratively insolvent at
21 some point. To litigate this would be very difficult, to
22 litigate every claim.

23 So when we were considering whether or not to add a lower
24 amount than what was agreed to in the global settlement, it was
25 very difficult to do. So that's why -- one of the reasons why

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1 we left it out.

2 Q. I'm not sure I followed your answer, but I'm not sure it
3 was responsive to my question either.

4 THE COURT: Well, let's leave the commentary out. If
5 you've got another question, ask your question.

6 BY MS. MILLER:

7 Q. You thought that it was important to include in your
8 liquidation analysis a discussion of affirmative claims that
9 could be asserted against Ally, right?

10 A. Correct.

11 Q. And you had some discussions with the committee's advisors
12 about what information should be included in that disclosure,
13 right?

14 A. That's correct.

15 Q. And you decided that instead of adding more descriptive or
16 running another -- adding another scenario that reflected an
17 Ally contribution, you would add the sentence that appears at
18 the end of paragraph 29 on page 5 of the liquidation analysis,
19 which states that the examiner's report includes an assessment
20 of potential claims against Ally, right?

21 A. I see it and it is there, that last sentence.

22 Q. And that is the debtors' disclosure about affirmative
23 claims against Ally, right?

24 A. One of them, yes.

25 Q. And Mr. Renzi, in a liquidation analysis, the JSNs would

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1 also retain any claims that they have against Ally, right?

2 A. Correct.

3 Q. You didn't consider the value of that in your liquidation
4 analysis, did you?

5 A. No, I did not.

6 Q. Mr. Renzi, in addition to testifying here as the debtors'
7 corporate representative on the liquidation analysis, you've
8 also submitted two expert reports in this case; is that
9 correct?

10 A. For phase 2, it's three in total.

11 Q. Right. Sorry. I'm phase 2 centered now -- on phase 2.
12 And you submitted direct testimony which goes primarily to your
13 expert testimony; is that right?

14 A. Correct -- excuse me, and my rebuttal to Mr. Fazio.

15 Q. When you say your rebuttal to Mr. Fazio, what are you
16 referring to?

17 A. Well, there are two reports, Your Honor. One was for
18 liquidation analysis and one was for also the analysis that Mr.
19 Fazio presented on intercompany balances.

20 Q. And so you're referring to your rebuttal report that you
21 submitted in phase 2?

22 A. I am.

23 Q. You're not referring to any additional rebuttal to
24 analyses by Mr. Fazio that were not included in your rebuttal
25 report, are you?

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1 THE COURT: There's a section in his direct witness
2 testimony called "Summary of My Rebuttal Report". It begins at
3 page 16. If you mean something different -- I'm confused. I
4 mean, his witness direct testimony includes what it includes,
5 but one of the things it includes is a rebuttal, Summary of My
6 Rebuttal Report, relating to Mr. Fazio.

7 MS. MILLER: Right.

8 BY MS. MILLER:

9 Q. And the court, I believe, is looking at page 16 of your
10 direct testimony, and turning back two pages to page 14 of your
11 testimony, there is actually a section called "Rebuttal to
12 Opening Fazio Report".

13 A. I'm sorry. Just which tab?

14 Q. I'm sorry. It is titled "Direct Testimony of Mark Renzi".
15 It's towards the back. It may be easier if you take it out of
16 the binder, but I'll defer.

17 A. Sure.

18 Q. Mr. Renzi, in paragraph 30 of your direct testimony, the
19 second to last sentence starts "Mr. Fazio incorrectly assumes
20 that to the extent the reinstatement of forgiven balances would
21 increase the amount of an intercompany balance or create a
22 balance where none existed as of the petition date, the junior
23 secured noteholders would be entitled to obtain value on
24 account of the increase or newly created balance through their
25 security interest; however, the Court has already determined in

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1 phase 1 that the junior secured noteholders do not have liens
2 on avoidance actions or the proceeds of avoidance actions."

3 Do you see that?

4 A. I do.

5 Q. And that's in the section that's your Rebuttal to the
6 Opening Fazio Report, right?

7 A. It is.

8 Q. And Mr. Renzi, can you turn to the Rebuttal Report of Mark
9 Renzi, Phase 2, in your binder?

10 A. Sure. Should I leave this paragraph open?

11 Q. Sure.

12 A. Okay. Expert Report of Mark Renzi, Phase 2? That tab?

13 Q. Expert Report of Mark A Renzi, Intercompany Balances,
14 dated November 1, 2013.

15 Mr. Renzi, can you show me where in this rebuttal report
16 you include the statements and opinions that are included in
17 paragraph 30 of your expert -- of your direct testimony?

18 A. Well, I'm not sure -- I mean, I'm not sure I can find it.

19 Q. Is it possible that it's not in here?

20 A. It's possible.

21 Q. And Mr. Renzi, is it possible that none of the opinions
22 that you express in paragraphs 28 through 32 in the section
23 titled "Summary of Mr. Fazio's Assumptions, Rebuttal to Opening
24 Fazio Report" are included anywhere in the rebuttal report that
25 you submitted in this case?

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1 A. I'm not exactly sure what you're getting at, honestly.

2 Q. I'm asking you if you're expressing opinions in your
3 direct testimony that you submitted to this Court on November
4 12th that are rebuttal to the opening report of Mr. Fazio that
5 were not included in the rebuttal report that you submitted in
6 this matter.

7 A. I think that my direct testimony clarifies anything that
8 may not have been highlighted in my expert report that I
9 thought was important to highlight for the Court. So to the
10 extent that there is something not -- the chronology isn't, I
11 think, important, and this is November 1st. I believe this
12 direct testimony is -- I don't remember, but I think it's after
13 that. And so I think that, to the extent that I need to
14 highlight anything, that it was done in the context of the
15 rebuttal that I've written from paragraph 28 forward. I hope
16 that was responsive.

17 Q. So you don't think that there are any opinions expressed
18 in your direct testimony that were not addressed in your
19 rebuttal report; is that right?

20 A. I think they work together in conjunction with each other,
21 to the extent that I missed stating something clearly, that I
22 did it in my direct testimony.

23 Q. Mr. Renzi, can you show me where in your rebuttal report
24 you talk about any errors or deficiencies in Mr. Fazio's
25 analysis or assumptions?

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1 A. I think that it's -- I would say that it's implicit but
2 not explicit.

3 Q. And so none of the five paragraphs of explicit
4 deficiencies, incorrect assumptions, and other mistakes made by
5 Mr. Fazio that you detail at length in over two pages in your
6 expert -- in your direct testimony are expressly included in
7 your rebuttal report; is that right?

8 A. Well, just to be clear, my rebuttal to Opening Fazio
9 Report is what's stated, so I'm a little confused by the way
10 you're using the terminology. My expert report doesn't
11 explicitly say it, but I do believe that Mr. Fazio is creating
12 a simplistic world when he's running some of his scenarios and
13 that I needed to address that in my direct testimony. To the
14 extent that it's not in my expert -- I'm sorry. Let me state
15 it by the way it's titled, Expert Report of Mark A. Renzi,
16 Intercompany Balances. I think that my direct testimony
17 clarifies it.

18 Q. And are those your expert opinions about the deficiencies
19 and the assumptions of Mr. Fazio?

20 A. Yes. Mr. Fazio has been involved in this case just during
21 litigation, has not been involved very long. I've been
22 involved in this case for almost two years. So I would say
23 yes, that is my expert opinion.

24 THE COURT: Ms. Miller, you're getting to the point of
25 diminishing returns on this point. I understand what you're --

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1 the point you're trying to make. I'm not sure that going
2 further with it is going to enhance the point.

3 MS. MILLER: I am moving on, Your Honor.

4 THE COURT: Okay.

5 MS. MILLER: I was with you.

6 BY MS. MILLER:

7 Q. Mr. Renzi, I'd like to focus now not on your rebuttal --
8 not on the section titled "Rebuttal to Opening Fazio Report"
9 but in the section of your direct testimony titled "Summary of
10 My Rebuttal Report which is --

11 A. Can I put this -- do I still need to have this part open?
12 I'm sorry. Do I still need to have the binder open at my
13 expert report or -- it's just -- I don't want things to fall
14 off of here.

15 Q. I like the slides better in your expert report, but it's
16 all in your direct testimony.

17 A. Okay.

18 Q. So no, you do not need to keep it open.

19 A. Okay. I like the slides better too.

20 Q. Mr. Renzi, I'd like to turn your attention first to
21 paragraph 36 and actually to the chart that's on page 19 of
22 your direct testimony. Do you see that?

23 A. I'm at paragraph 36 of my direct testimony, yes,
24 "Reconciliation of FTI Model and Fazio Model".

25 Q. Right. And in the chart, you lay out the Fazio model and

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1 the FTI model and you note the variance between the two models.
2 And with the exception of the additional expense allocation,
3 which Mr. Fazio included at twenty-seven million dollars, and
4 you include it at 170 million dollars, the Fazio model and the
5 FTI model are virtually the same, right?

6 A. Correct, or stating the amount of secured recovery which
7 obviously has been updated by Your Honor, but this is -- at
8 that point in time, this was accurate.

9 Q. So you understand that this amount has been updated or
10 would need to be updated as a result of the Court's rulings in
11 phase 1 of this case, right?

12 A. Yes. My understanding is the 1745 goes to approximately
13 1.9 billion. The 1 -- 17 --

14 THE COURT: It's the 143 million dollars of the
15 additional expenses, line 8 --

16 THE WITNESS: Correct.

17 THE COURT: -- as to which I ruled.

18 THE WITNESS: Correct. And I think there was, like,
19 twelve million more or roughly a little bit more.

20 BY MS. MILLER:

21 Q. Right. And so if you look at the Fazio model and the FTI
22 model, the base of both of those models, the Fazio model is now
23 actually a lot closer to the actual base case in this -- that's
24 operative in this adversary, right?

25 A. Correct.

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1 Q. Just because of mathematics, not for -- for no other
2 reason, right? And because the base case is now off, that
3 means that the numbers in the recovery models throughout your
4 report would need to be adjusted slightly upward to reflect
5 that change, right?

6 A. That's correct.

7 Q. And so even if all of your assumptions are right, the
8 numbers are now going to be somewhat misstated on the low end
9 because of that inclusion, right?

10 MR. KERR: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MS. MILLER:

13 Q. Mr. Renzi --

14 THE COURT: Once again, I really do understand your
15 point, but be my guest.

16 BY MS. MILLER:

17 Q. In your direct testimony, you present scenarios which show
18 the impact of the intercompany claims on JSN secured
19 recoveries, right?

20 A. Yes, the intercompany balances, correct.

21 Q. And each of the -- I think it's five scenarios that you
22 run, 1A through D and 2, assume that there is no Ally
23 contribution, right?

24 A. There's six scenarios, but -- base plus four, plus one.

25 Q. Got it. And in all six of those models, you assume that

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1 there is no Ally contribution, right?

2 A. That's correct.

3 Q. Mr. Renzi, you ran scenarios that included a recovery on
4 the intercompany balances and also included a value for the
5 settlement with Ally, right?

6 A. In the context of the expert report, no. But in order to
7 understand whether or not FTI and Houlihan had consistent or
8 reasonably consistent outcomes, we thought that it was one
9 thing that we wanted to do. So yes, we checked to make sure
10 that they were doing things properly.

11 Q. And so you know that if you assume that all of the
12 intercompany claims are valid, adding in an Ally contribution
13 increases the recovery on those intercompany claims, right?

14 THE WITNESS: Your Honor, I would just say that
15 keeping everything else equal that that's an accurate
16 statement, but when I think about it, Ms. Miller is referring
17 to scenario 2 and then putting it in settlement. What I do
18 believe what would happen is a number of other variables would
19 change.

20 So to the extent that you're implying that everything
21 else equal for scenario 2 and putting in the settlement, that's
22 one thing, but I do believe -- and my belief is that a number
23 of other things would change; for example, the claim amounts
24 would change for all other constituents if intercompany
25 balances were added.

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1 BY MS. MILLER:

2 Q. Understanding your position, if you kept all of the
3 intercompanies as valid debt and flowed the Ally contribution
4 through the waterfall, the JSNs would be oversecured, right?

5 A. My understanding is that if -- that they would be
6 oversecured.

7 Q. And that's without the JSNs having a lien on any portion
8 of the Ally contribution, right?

9 A. Just -- correct. And just to clarify my prior answers, I
10 want to highlight that you have to keep a number of other
11 assumptions constant for that to be accurate. So the context
12 is very important because there are a number of assumptions
13 that could change, and I believe they would change.

14 THE COURT: How did you run that analysis to reach
15 that result?

16 THE WITNESS: Well, Mr. Fazio ran the analysis.
17 Effectively, it's scenario 2, Your Honor, in my report. In
18 scenario 2, he just assumed that if you allow the intercompany
19 balances and you allow the Ally settlement and then you change
20 nothing else, that indeed you become oversecured. And again, I
21 think I ran it in that context, because I felt that it was
22 important to say whether or not there was reasonably similar
23 outcomes. And that was the only context in which I did it.

24 When I think about the analysis that Mr. Fazio did, I
25 believe -- as I said in my direct testimony, I believe a number

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1 of additional claims would be asserted because I just don't
2 think that leaving them the same is reasonable.

3 THE COURT: And why is that?

4 THE WITNESS: Because having the intercompany balances
5 being asserted was not part of the global settlement. I think
6 that the global settlement contemplated paying the junior
7 secured notes in full, and that did not have intercompany
8 balances. There was a waiver of intercompany balances. So to
9 the extent that they're stated, I believe that it changes the
10 calculus of a number of constituents here and --

11 THE COURT: If they get the benefit of intercompany
12 balances, others are going to want to do the same thing.

13 THE WITNESS: Exactly. And they would be, in my
14 opinion, significantly diluted if that happened. And then I
15 think Mr. Fazio's report doesn't take that into account.

16 BY MS. MILLER:

17 Q. Mr. Renzi, the JSNs would also be over secured with a much
18 smaller Ally contribution if the intercompany balances are
19 treated as debt, right?

20 A. I can't answer that question here. It depends. It
21 depends on a number of variables. I think if you're changing
22 the amount of the settlement, I believe it will drastically
23 change a number of additional assumptions such as where the
24 money is put. So to the extent that, when you're looking on
25 these intercompany balances, it depends on the legal entity,

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1 because if you put it a different amount in GMACM and RFC,
2 there are a lot of claims, for example, at RFC. So if you put
3 more money at RFC, it depends on whether or not that portion
4 that the intercompanies would get is much smaller than it would
5 be if it was all at ResCap, because there are not a lot of
6 claims at ResCap.

7 So I can't answer that here. As I stated before in my
8 deposition, I mean these models are unfortunately complex, but
9 there are complex issues and there are thousands of lines, and
10 I like to say I'm pretty good at this, but I don't think I can
11 do it right here.

12 Q. Well, maybe I can help you. I'd like you to turn to
13 DX-BDE which is a December 4, 2012, presentation by FTI and
14 ResCap titled "ResCap Discussion Materials".

15 THE COURT: You have to wait for me to find it.

16 MS. MILLER: Sorry.

17 MR. KERR: Your Honor, may I have a moment?

18 THE COURT: Just repeat for me, Ms. Miller, which
19 exhibit you said.

20 MS. MILLER: DX-BDE.

21 THE COURT: Okay. I have it.

22 MR. KERR: I'm there, DX-BDE.

23 MS. MILLER: I think counsel has asked for a minute.

24 MR. KERR: Your Honor, we're fine.

25 THE COURT: Go ahead, Ms. Miller.

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1 BY MS. MILLER:

2 Q. Mr. Renzi, is this a document that you recognize?

3 A. I do.

4 Q. And were you involved in the preparation of this document?

5 A. I was.

6 Q. If you look at page 5, it lists the waterfall key
7 assumptions for the base case. Do you see that?

8 A. I do, I do see that.

9 Q. And the third row down, it says "Ally settlement", and it
10 assumes an Ally settlement at 750 million dollars in cash. Do
11 you see that?

12 A. Third row, third bullet or --

13 Q. First bullet -- sorry, the third -- the row titled "Ally
14 settlement" --

15 A. Oh, I'm sorry.

16 Q. -- about a third of the way down.

17 A. I see it.

18 Q. Do you see it?

19 A. I do.

20 Q. Okay. And the first bullet says, "Assume Ally settlement
21 at 750 million dollars in cash"?

22 A. I do see that.

23 Q. You see that, okay. And if you turn to pages 8 and 9 in
24 the deck, on page 9 it says, "Scenario 3, pre-petition
25 interco's are valid." Do you see that?

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1 THE COURT: Just say that again?

2 MS. MILLER: On --

3 THE COURT: I'm on that page, but I was looking at --

4 BY MS. MILLER:

5 Q. On slide 9 of the deck, there are a number of scenarios
6 laid out, and scenario 3 is pre-petition interco's are valid.
7 Do you see that, Mr. Renzi?

8 A. I do, yup.

9 Q. And the first bullet under that scenario says, "JSB
10 secured recovery increases to approximately 100 percent." Do
11 you see that?

12 THE COURT: You didn't read it exactly correct, but
13 it's close enough.

14 THE WITNESS: I do see that.

15 MS. MILLER: Right. It says increased to
16 approximately 100 percent, I apologize.

17 BY MS. MILLER:

18 Q. And if you look at the illustrative recoveries on slide 8,
19 you see that, in fact, under scenario 3 the JSN secured
20 recovery is at 2228 million -- billion.

21 A. It doesn't say that. It just says recovery, junior
22 secured bonds, junior secured bonds recovery. It doesn't say
23 secured recovery there. I see that -- I'm sorry. I don't mean
24 to be argumentative. I see the 2228. It doesn't say secured
25 recovery though.

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1 THE COURT: This is the point that they will get that
2 amount, although some of it is a result of a deficiency claim
3 that comes from other debtors.

4 THE WITNESS: That's correct.

5 BY MS. MILLER:

6 Q. Yeah, you --

7 A. I mean, I think the context of this -- I certainly
8 understand where you're going. This is an older presentation
9 from December with a number of assumptions that have already
10 actually have played out, which are much different than what's
11 presented here.

12 THE COURT: You have to keep your voice up.

13 THE WITNESS: I'm sorry.

14 THE COURT: I heard you.

15 THE WITNESS: Okay.

16 THE COURT: I want to be sure we have a clear
17 transcript, okay?

18 THE WITNESS: Okay.

19 BY MS. MILLER:

20 Q. Sorry. I was actually -- I just flagged the wrong page.
21 If you look at slide 11 in the deck, it's of the JSB recoveries
22 by source, and if you look under scenario 3 on this slide, you
23 see that under scenario 3 with the interco's on, the secured
24 recoveries are 2228 with no recoveries from deficiency claims.
25 Do you see that?

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1 A. I do see that.

2 Q. Okay. And looking back at slide 9 and the sort of
3 pictogram that is next to scenario 3 indicating whether various
4 creditor groups have improved static or declined positions
5 under that scenario, do you see that the JSN secured recovery
6 is improved under scenario 3 where the intercompanies are on,
7 right?

8 A. Yes, I see that.

9 Q. And with respect to the unsecured creditors, it's kind of
10 a mixed bag, right? The SUNs stay static, the rafts (ph.)
11 decrease, the nonrafts increase, and the other general
12 unsecureds also decrease, right?

13 A. Yes, I do see that.

14 Q. So it was known certainly by December 2012, that the
15 validity of the intercompany balances would have a material --
16 would significantly improve the JSN recoveries, right?

17 A. Again, in the context of, I think it's very important to
18 answer that question that we look back at the assumptions --
19 Your Honor, I mean, a number of these assumptions -- so the
20 answer is simply yes, they do improve, but we are making a
21 number of assumptions that we now know the actual truth here,
22 meaning time is --

23 THE COURT: What page are you on?

24 THE WITNESS: I'm just on page 5.

25 The reason why I highlight it is these models are

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1 incredibly complex. Changing one or two levers results in many
2 different things. As you can see, we have many scenarios here,
3 and obviously all constituents want to see what happens under
4 multiple scenarios, and that's why we're here under phase 2, to
5 see all these different scenarios. But as we know, this says,
6 "Illustrative waterfall analysis using projected assets and
7 claims as of 1/31/13." So the global settlement is based on
8 430. Almost all of the claims in the amounts of where they've
9 been asserted have changed relative to this presentation.

10 So yes, from this presentation I certainly believe
11 that my math was correct. But to the extent that you want me
12 to extrapolate to 430, I don't think that I could do that,
13 just --

14 BY MS. MILLER:

15 Q. And Mr. Renzi, just focusing on this document and the
16 specific time in which you made it, you believed at the time
17 that the assumptions that you were making were reasonable,
18 right?

19 A. I believe that this document was helpful to understand the
20 sensitivity of changing certain assumptions at that point in
21 time, so correct.

22 Q. And so this document also is an accurate reflection based
23 on your waterfall model and the math that comes out of that or
24 goes into it of what the value of the intercompany claims were
25 as of this date, right?

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1 MR. KERR: Objection, Your Honor.

2 THE COURT: Sustained. You haven't been listening to
3 him. You haven't been listening to what he said.

4 Ask your next question.

5 BY MS. MILLER:

6 Q. Mr. Renzi, I understand that things have changed since
7 December of 2012. Was this an accurate reflection of
8 assumptions that you thought were reasonable as of that date?

9 A. As of this date, yes, I thought these assumption -- well,
10 I thought that it displayed outcomes. I'm not necessarily
11 opining on all the assumptions. There are eight scenarios as
12 illustrated on page 7. When I ran these scenarios, I didn't
13 necessarily opine like I would in an expert report whether or
14 not I thought they were all reasonable. I was just asked by
15 counsel that it would be helpful for people to understand the
16 mathematics behind it. And I personally, as I look back at it,
17 I like the way I presented things. I think it's helpful,
18 because it is complex, and there are -- I mean, as you can see,
19 Your Honor, I had to create a table on page 7 to see -- to keep
20 things straight because there are just so many different
21 assumptions that you can change to see what happens to the
22 outcomes.

23 So I'm not sure I would say -- I'm not going to say that I
24 think all these assumptions are reasonable. I don't -- I think
25 that it's mathematically accurate and helpful to understand

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1 what happens when you change different levers, and that goes
2 back to my prior testimony of how sensitive certain assumptions
3 are.

4 Q. And Mr. Renzi, looking at slide 11 again, based on the
5 assumptions as of this date and putting ourselves back in
6 December 2012 with these assumptions and the various models
7 that you ran, the JSNs would have a total recovery of 100
8 percent in all but one model, whether based on a secured
9 recovery alone or a combination of a secured recovery and a
10 deficiency claim, right?

11 A. I think you're referring to row 26, and as you've
12 highlighted, scenario 4 on row 26 says 94 percent, and
13 absent --

14 Q. Mr. Renzi, turning now to paragraph 40 of your direct
15 testimony, to scenario 1A --

16 A. Just for sake of organization, can I --

17 Q. Sorry.

18 A. -- can I put this to the side, or do I need this open,
19 too? Something may fall.

20 Q. You can put it to the side --

21 A. Okay.

22 Q. -- at least for now.

23 A. You said paragraph 40?

24 Q. Paragraph 40.

25 A. Okay.

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1 Q. Mr. Renzi, in scenario 1A presented in your direct
2 testimony, you effectuate debt forgivenesses that didn't
3 actually happen pre-petition, is that right?

4 A. That is correct. That is what scenario 1A is.

5 Q. Okay. And you say at the end of paragraph 40 on page 21
6 that it is appropriate to assume that these balances -- that
7 "but for the bankruptcy filing, it is appropriate to assume
8 these balances would have been forgiven in the ordinary course
9 of business." Do you see that?

10 A. Yes, I see it and I still believe that's consistent with
11 my belief.

12 Q. The debt forgivenesses that you're talking about here had
13 not been approved by the Ally board, right?

14 A. Just one area of distinction. I would say anticipated
15 intercompany balance forgiveness. I don't call it debt
16 forgiveness.

17 THE COURT: Had it been approved by the Ally board
18 yet?

19 THE WITNESS: Right.

20 THE COURT: Had it been approved by the Ally board
21 yet?

22 THE WITNESS: I'm sorry. You mean the anticipated? I
23 can't answer that. I don't -- I don't know the answer, if the
24 Ally board had approved it. I know that it had been
25 anticipated and identified.

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1 BY MS. MILLER:

2 Q. So it's your testimony that you didn't know that the
3 scheduled, at least certain of the scheduled debt forgivenesses
4 hadn't even ever been submitted to the Ally board?

5 A. I can't testify as to whether it had been submitted. I
6 know that it had been identified and highlighted and presented
7 to all constituents, as far as I can tell.

8 Q. When you say "all constituents", who are you referring to?

9 A. Meaning that in production we presented -- we produced
10 these documents that said these are the balances that were
11 identified for forgiveness.

12 THE COURT: When did that occur?

13 THE WITNESS: Your Honor, I can't remember. I think
14 it happened during the examiner -- when the examiner was doing
15 their diligence. I can't remember the specific date.

16 THE COURT: So they were presented for forgiveness
17 post-petition?

18 THE WITNESS: They were, I -- I think the
19 chronology --

20 THE COURT: Because the examiner is long after the
21 case filed.

22 THE WITNESS: Right. I meant -- I meant the
23 documentation was presented, meaning to third parties. But the
24 company had identified it, I think, earlier in the year, pri --

25 THE COURT: That's not -- my question is, when had the

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1 company identified items for debt forgiveness?

2 THE WITNESS: I think it was prior to the bankruptcy
3 filing.

4 THE COURT: Were you on board at that time?

5 THE WITNESS: I can't remember. If I was on board,
6 I'm not sure it was highlighted to me at that point in time.

7 THE COURT: Go ahead, Ms. Miller.

8 BY MS. MILLER:

9 Q. And Mr. Renzi, did you ever look into what documentation
10 existed within the company about the reported schedules or
11 anticipated debt forgiveness?

12 A. I looked at some of the documents that were produced by
13 the company for the anticipated intercompany balance
14 forgiveness.

15 Q. And I'd like to turn your attention to Exhibit DX-ANK.

16 (Pause)

17 A. Is this towards the front?

18 Q. It is forwards the front. It's the --

19 A. Got it.

20 Q. -- second document.

21 A. I'm there, thank you.

22 Q. And Mr. Renzi, this is an e-mail from Barbara Westman to
23 you and Brian McDonald, copying Jake Bizella (ph.) and Jill
24 Horner, dated March 3, 2013. Do you see that?

25 A. I see the e-mail, yes.

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1 THE COURT: May I ask you a question, Ms. Miller?

2 MS. MILLER: Sure.

3 THE COURT: On the first page, the bold heading, "Re:
4 Intercompany and OID discussion", was that part of an original
5 document, or was that added to the exhibit?

6 MS. MILLER: That is the Re: line from the e-mail.
7 This is -- you're testing me -- it is I'm assuming a pre-
8 Outlook platform that prints like this.

9 MR. KERR: Your Honor, that's how we found the
10 documents, how it was produced.

11 THE COURT: Okay. That's what I --

12 MR. KERR: So it came from our files like that.

13 THE COURT: That's what I wanted to understand. Okay.
14 Thank you, Mr. Kerr.

15 Go ahead.

16 MS. MILLER: It does look a lot like our Bates
17 stamping of the exhibit number --

18 THE COURT: I know; that's why I asked the question.

19 MS. MILLER: -- but I didn't title the document.

20 THE COURT: Okay. I wasn't accusing you.

21 MS. MILLER: Could've come up with something better.

22 Q. And as the Court points out, Mr. Renzi, this e-mail, the
23 Re: line of this e-mail appears to be "Intercompany and
24 OID discussion."

25 THE COURT: I'm not sure it's the Re: line of the e-

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1 mail. I mean, at some point, Mr. Kerr has represented that's
2 how they found the document.

3 MR. KERR: Your Honor -- and this is Mr. Kerr -- I
4 have no idea why this -- this is on a number of documents. I
5 have absolutely no idea.

6 THE COURT: Just go ahead.

7 MS. MILLER: Okay.

8 Q. Mr. --

9 A. I'm sure the font size wasn't that big.

10 THE COURT: I've never seen an e-mail this font size,
11 or bold.

12 THE WITNESS: There's times that I've wanted to make
13 it that big.

14 Q. If you look at Ms. Westman's e-mail, she says to you,
15 starting -- it's hard to see the first line of what appears to
16 be the text; it's kind of smushed right up against the
17 attachment titles -- but it says, "Here are two responses to
18 the UCC questions in the attached document, "intercompany
19 questions", 2 underscore 25 underscore 13.

20 And she says, "In response to relationship number 3C, see
21 document labeled 'Intercompany Relationships 02-29-12v.1', the
22 document attached was an internal working document and contains
23 much more detailed information than we have provided in the
24 past."

25 And then in bold, "I am not sure we want to share this

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1 level of detail. However, we have no other documentation to
2 support the statement that we plan to do debt forgiveness on
3 these balances."

4 Do you see that?

5 A. I do. I do.

6 Q. Appeared you don't doubt that you got this e-mail in March
7 of 2013, do you?

8 A. I'm sure -- it looks like I did.

9 Q. And Ms. Westman continues, "I do have a statement with an
10 internal status update document that indicates we were
11 targeting to bring this request to an April 4th Ally board
12 meeting as the debt forgiveness would have required Ally board
13 of approval, but we never moved forward after the bankruptcy
14 process was underway." Do you see that?

15 A. They were tumultuous times. I think that right around
16 2/29/12 is just prior to filing, and I think that's what she's
17 getting at, that it was pretty busy for such a large company to
18 file bankruptcy. So I think that they had focused on other
19 things other than that -- the items she's referring to.

20 Q. Right. So Ms. Westman is saying that the company did not
21 have formal documentation other than the spreadsheet and
22 they've never presented the request to the Ally board for
23 approval, right?

24 MR. KERR: Objection, Your Honor.

25 THE COURT: Overruled. The document says what it

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1 says. I think it was a fair summary of the document.

2 A. I see that written here.

3 Q. And turning to about three pages in the document, I'm
4 going to read out the long Bates number, document --

5 THE COURT: Just read the last three digits.

6 MS. MILLER: Okay.

7 Q. Last three digits, 763.

8 THE COURT: We'd be here until the 5 o'clock stop time
9 if we had to get to the --

10 MS. MILLER: I'm sorry.

11 THE COURT: -- the full Bates.

12 A. I'm there, 763.

13 Q. And if you see, it says relationship three -- sorry, at
14 the top of the page, it says debtor net payable balances as of
15 5/13/2012, and it has seven relationships listed.

16 A. I do see that.

17 Q. And one of the relationships is number 3, Homecomings
18 Financial, LLC to Residential Funding Co., LLC in the amount of
19 1,251,521,437 dollars. Do you see that?

20 A. I do. I do; sorry.

21 Q. And is it your understanding that it's the forgiveness of
22 that intercompany balance that Ms. Westman is discussing on the
23 first page of this exhibit?

24 A. That is my understanding, and it's also reflected, I
25 think, in the schedule that we were referring to before in my

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1 direct testimony.

2 Q. That was my next question, that that balance is one of the
3 ones that you schedule as forgiven -- has scheduled to be
4 forgiven and include as though it had been forgiven in your
5 analysis, right?

6 A. I think that's correct.

7 Q. And Mr. Renzi, in running scenario 1A, you didn't consider
8 whether effectuating these forgivenesses on the eve of
9 bankruptcy would have subjected them to avoidance as preference
10 or fraudulent conveyances, did you?

11 A. Are you talking about at this point in time, or in the
12 time of my expert report?

13 Q. I'm talking about in scenario 1A in your direct testimony.

14 A. I considered under the assumptions that I've laid out that
15 if the company hadn't filed, that they would have gone through
16 with the identified intercompany balances that they wanted to
17 forgive and, I presume, that they would have forgiven, but for
18 the bankruptcy.

19 Q. I think we'd all be very surprised to learn that ResCap
20 never filed for bankruptcy. You're not suggesting that, right?

21 A. No.

22 THE COURT: I think his testimony was clear.

23 Ask your next question.

24 Q. Mr. Renzi -- I'm going to do a short one because we're
25 short on time here -- skipping over scenario 1B and turning now

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1 to scenario 1C, which is on page 23 of your direct testimony,
2 in this scenario you subordinate certain intercompany balances
3 based on bankruptcy standstill provisions that you believe
4 would apply in certain intercompany agreements that you
5 identified, right?

6 A. That's correct.

7 Q. But it's the debtors' position that these contracts don't
8 relate to the current intercompany balances at all, right?

9 A. I think that you would consider them tangential. They're
10 within the org structure, up and down the org structure, but
11 not specifically to those balances.

12 I think, if I may, that what we're trying to do is say
13 that to the extent that Mr. Fazio believes that these balances
14 are governed by those notes and that they are indeed valid,
15 that if they're indeed valid because of those notes, even
16 though they're not specific to those balances, then it's
17 reasonable to assume that the bankruptcy standstill provision
18 would apply. But I'm not saying that these notes govern. I
19 don't think these notes govern, and I discussed that with
20 counsel.

21 But to the extent -- I'm sorry.

22 Q. And in paragraph 46 of your direct testimony, you say the
23 debtors do not believe that the intercompany balances on the
24 debtors' books and records, as of the petition date, accrued
25 pursuant to these agreements, right?

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1 A. Correct.

2 Q. And you also understand that the debtors can be right that
3 the intercompany balances did not accrue pursuant to these
4 agreements and the intercompany balances may still be valid
5 debt, right?

6 MR. KERR: Objection.

7 THE COURT: Overruled.

8 A. It's possible.

9 Q. And you don't identify any other basis to subordinate
10 these intercompany balances other than the particular
11 agreements that you've identified in your expert testimony,
12 right?

13 A. That's correct, for scenario 1C.

14 THE COURT: You've got three more minutes.

15 MS. MILLER: Right. I'm talking --

16 THE COURT: We're going to use all of our time.

17 MS. MILLER: Okay.

18 Q. Mr. Renzi, could you turn to DX-AUC?

19 A. I'm there.

20 MS. MILLER: Your Honor, I'll make the same
21 representation, that this is how the document was produced.

22 THE COURT: I -- but now I got the picture of it --

23 MS. MILLER: Okay.

24 THE COURT: -- so okay.

25 Q. Mr. Renzi, looking at this document, which is an e-mail,

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1 the first document at the top of the chain is an e-mail from
2 Brian McDonald to T. Talasso (ph.) at AlixPartners with a CC to
3 a number of people, including yourself, dated January 17th,
4 2013; do you see that?

5 A. I do.

6 Q. And if you look -- well, and the text of that e-mail says
7 "Todd, per Mark's request, I'm sending the attached
8 information." Do you see that?

9 A. I do.

10 Q. And is it your understanding that you're the Mark that's
11 being referred to here?

12 A. With a K, yes.

13 Q. So turning -- scrolling down to the next e-mail in the
14 chain, which is an e-mail from you to Marc Landy --

15 THE COURT: With a C.

16 MS. MILLER: With a C.

17 Q. -- Brian McDonald and William Nolan, dated December 21,
18 2012, you write, "Marc," with a C, "Please find the additional
19 intercompany information that we discussed. Regards, Mark."
20 Okay.

21 THE COURT: As much as I want to hear it, we have to
22 stop now for the day. We'll resume at 9.

23 How much longer do you anticipate with your cross-
24 examination?

25 MS. MILLER: Half an hour.

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1 THE COURT: Okay.

2 Is there going to be redirect, Mr. Kerr?

3 MR. KERR: There could be.

4 THE COURT: Okay. All right. See, we didn't run out
5 of witnesses.

6 MR. KERR: We did our best, Your Honor.

7 THE COURT: I know.

8 MR. KERR: If Mr. Rains had gotten his exhibits in,
9 we'd be still waiting, so.

10 THE COURT: Mr. Lee, you had something you wanted to
11 say?

12 MR. LEE: Yes, sorry.

13 MS. MILLER: Sorry.

14 MR. LEE: It's Gary Lee from Morrison Foerster for the
15 debtors, here. Your Honor, I think you asked us this morning
16 to follow up with Mr. Rode?

17 THE COURT: What's that? I couldn't hear you.

18 MR. LEE: With Mr. Rode. We've done so. There have
19 been several discussions with him and SilvermanAcampora and
20 counsel for the debtors, but the two statements that I made on
21 the record this morning were both correct. There had been a
22 motion for relief from the stay; there were no appearance; Your
23 Honor took the matter under advisement based on the papers and
24 denied the motion. And there has been no objection to his
25 claim; that discussion is ongoing.

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1 THE COURT: Okay.

2 MR. LEE: Okay. And he's not --

3 THE COURT: I noticed Mr. Nosek sitting with him in
4 the back earlier. Keep talking to him, okay?

5 MR. LEE: Thank you, Your Honor.

6 THE COURT: Okay, thank you.

7 All right, see you all in the morning at 9 o'clock.

8 Do the proponents -- do you anticipate you're going to
9 conclude your case tomorrow?

10 MR. KERR: Yeah, Your Honor, there is one witness who
11 I believe is not available until Friday, a very short witness.

12 THE COURT: I've already said you'll work it out and
13 we -- I'm perfectly amenable to taking witnesses out of order.

14 MR. KERR: And frankly, Your Honor, he witnesses
15 tomorrow we expect there will be cross-examination, so it just
16 depends how long they cross them.

17 THE COURT: Okay, all right. See you all in the
18 morning. Thank you very much.

19 MR. KERR: Thank you.

20 (Whereupon these proceedings were concluded at 5:02 PM)

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I, Penina Wolicki, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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Penina Wolicki

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